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IN THE

Supreme Court of the United States

October Term, 1967

No. 1347

B. L. SUHL and MARGARET WIERMAN,
Defendants and Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondents and Appellee Below.

Petition for Writ of Certiorari to the Supreme Court of the United States After Decision and Judgment of the United States Court of Appeals for the Ninth Circuit, After a Jury's Verdict of Guilty and Judgment and Sentence of the United States District Court of the Northern District of California, Northern Division.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Ninth Circuit affirming judgment of the U. S. District Court for the Northern District of California, Northern Division, in a criminal case wherein United States of America is plaintiff and B. L. Suhl and Margaret Wierman, *et al.*, are defendants in Case No. 14194, wherein the defendants are charged by indictment with four counts of mail fraud,

violation of Title 18 U.S.C. Section 1341, one count of conspiracy, violation of Title 18 U.S.C. Section 371, and one count 18 U.S.C. Section 656, misapplication of bank funds.

Relevant Proceedings in the United States District Court.

1. On December 4, 1964, an indictment was returned by the Grand Jury charging B. L. Suhl, Margaret Wierman, Ronald B. Vaughn and Richard Gibson with violations of Section 1341 of Title 18 U.S.C. (mail fraud), Counts One and Two against B. L. Suhl, Margaret Wierman and Ronald B. Vaughn. Counts Three and Four against B. L. Suhl, Margaret Wierman and Richard Gibson.

Count Five charges B. L. Suhl, Margaret Wierman and Ronald B. Vaughn with a violation of Section 656 of Title 18 U.S.C., and Count Six charges all four defendants with conspiracy (18 U.S.C. 371) to violate Section 1341 of Title 18 U.S.C.

2. Pleas of Not Guilty were entered as to all defendants. The indictment was dismissed against defendant Gibson before trial.

3. The case went to trial on May 18, 1965 against Suhl, Wierman and Vaughn.

4. The trial was concluded on June 17, 1965 and a verdict of Guilty was returned against each of the defendants on trial on each of the counts with which they were charged [R, Tr. p. 1270].

5. Motions for a new trial as to each defendant in due time, and also for a judgment of acquittal, and the matter continued to November 1, 1965 [R. Tr. p. 1335] for report on probation.

6. On November 1, 1965, the Court pronounced judgment on each of the defendants [R. Tr. p. 1335] and an appeal was immediately taken to the United States Court of Appeals for the Ninth Circuit.

Statement Showing the Issues Involved Under the Allegations in the Indictment.

Counts One and Two of the Indictment charge B. L. Suhl, Margaret Wierman and Ronald B. Vaughn with a violation of Section 1341 of Title 18 U.S.C. (Mail fraud). Said charge alleges in part that the defendants did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses and representations by means of a "check kite" scheme whereby false credit would be obtained by exchange and passing of worthless checks between two banks, to wit, the Bank of America, Manchester-Vermont Branch, Los Angeles, California, and the Frontier Bank of Covelo, County of Mendocino, State and Northern District of California. It is alleged that as a part of the scheme and artifice to defraud, checks were drawn on the account of B. L. Suhl at the Bank of America, Manchester-Vermont Branch, Los Angeles, California and caused to be deposited to the account of Ronald B. Vaughn at the Frontier Bank of Covelo, County of Mendocino, State and Northern District of California, at times when the account of the said B. L. Suhl contained insufficient funds to cover said checks, as the defendants then and there well knew; and,

As a further part of the scheme and artifice to defraud, checks were drawn on the account of Ronald B. Vaughn at the Frontier Bank of Covelo, County of Mendocino, State and Northern District of California, and

caused to be deposited to the account of B. L. Suhl at the Bank of America, Manchester-Vermont Branch, Los Angeles, California, at times when the account of the said Ronald B. Vaughn contained insufficient funds to cover the checks, as the defendants then and there well knew.

It is further alleged that as a further part of the scheme and artifice to defraud, the above defendants utilized the span of time involved in the normal passage of mails between Covelo and Los Angeles, California, to accomplish delay in the posting of checks to the said respective accounts, and it is alleged that the defendants caused personnel of the bank to place said checks in an envelope in an authorized depositary for mail matter, which said envelope and its contents were delivered by the Post Office Department of the United States, according to the directions thereon, to the Frontier Bank of Covelo in the State and Northern District of California, and a similar charge with respect to the delivery of checks by the Frontier Bank which were to be delivered to Los Angeles, California.

Counts Three and Four of said Indictment charge B. L. Suhl, Margaret Wierman and Richard Gibson with similar offenses between the same banks, and in particular, Paragraph 3 of Count Three (p. 4 Indictment) alleges:

> "As a further part of the scheme and artifice to defraud, checks drawn on the account of RICHARD GIBSON at the Frontier Bank of Covelo, County of Mendocino, State and Northern District of California, *were caused to be deposited to the account of B. L. SUHL at the Bank of America, Manchester-Vermont Branch, Los An-*

geles, California, at times when the account of the said RICHARD GIBSON contained insufficient funds to cover the checks, as the defendants then and there well knew." [Emphasis ours].

Count Five alleges that at all times mentioned therein, the Frontier Bank of Covelo was a State Bank and was insured by the Federal Deposit Insurance Corporation under Certificate No. 1335 dated February 18, 1957, and charges that the defendant Margaret Wierman, who was then president of the Frontier Bank of Covelo, California, B. L. Suhl and Ronald B. Vaughn committed a violation of Section 656 of Title 18 U.S.C., in that during the period between September, 1963 through December, 1963, said president Margaret Wierman did willfully misapply monies, funds and credits of said bank, and monies and funds entrusted to the custody and care of said bank, by willfully authorizing, directing and causing checks drawn on the account of B. L. Suhl at the Bank of America, Manchester-Vermont Branch, to be deposited to the account of Ronald B. Vaughn at the Frontier Bank of Covelo, then and there well knowing that said checks did not represent sufficient funds in said B. L. Suhl's account, on the following dates and in the following respective amounts:

DATE	AMOUNT
9-20-63	46,711.00
10-28-63	67,500.00
11-14-63	80,000.00
11-18-63	55,000.00
11-22-63	86,700.00
11-27-63	55,000.00
12-20-63	125,000.00
12-23-63	70,000.00

and thereafter on each said date did willfully and knowingly authorize, direct and cause a withdrawal in the same respective amount to be made from the account of Ronald B. Vaughn at said Frontier Bank of Covelo, then and there well knowing that there were insufficient funds in said account to cover said withdrawal.

The said acts of Margaret Wierman were aided, abetted, counselled and induced by B. L. Suhl and Ronald B. Vaughn.

Count Six of the Indictment charges all four defendants with conspiracy (18 U.S.C. 371) to violate Section 1341 of 18 U.S.C.

Four overt acts are alleged, which will be mentioned in detail hereinafter [Clk. Tr. p. 00001].

The Indictment was dismissed against Richard Gibson, and the remaining defendants were convicted on all counts with which they were charged. (See Jury's verdict as to each defendant in Clerk's Transcript on Appeal, Page Nos. designated as 000054 and 000065, and the judgment and sentence of the Court [See Clk. Tr. pp. unnumbered]) was pronounced on November 1, 1965.

Concise Statement of the Grounds on Which the Jurisdiction of This Court Is Grounded.

1. The decision of the United States Court of Appeals was filed on February 6, 1968 (See Appendix No. 1 for the decision).

2. A petition for a rehearing was filed on the 6th day of March, 1968.

3. The petition for a rehearing was denied on the 18th day of March, 1968.

4. An application for a stay of judgment was filed and granted on March 26, 1968.

5. A request that the entire record in said case be certified to the Supreme Court was filed on the 25th day of March, 1968.

6. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

Statutes and Rules of Court Involved in This Proceeding.

28 U.S.C.A., Section 1254, Courts of appeals; certiorari; appeal; certified questions, provides in part, as follows:

> "Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

Title 28 U.S.C.A., Page 66, Supreme Court Rule 38, Paragraphs 5 and 5(b), provides:

> "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local deci-

sions; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

U.S.C.A., Constitution, Amendments 1 to 5, at page 297, states:

"AMENDMENT V—Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation for Property:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Title 18 U.S.C.A., Section 371, Conspiracy to Commit Offense or to Defraud United States, provides as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in

any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 of imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

Title 18 U.S.C.A., Section 656, Theft, embezzlement, or misapplication by bank officer or employee, provides as follows:

"Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, national bank or insured bank, or a receiver of a national bank, or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank or any moneys, funds, assets or securities instrusted to the custody or care of such bank, or to the custody or care or any such agent, officer, director, employee or receiver, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount embezzled, abstracted, purloined or misapplied, does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"As used in this section, the term "national bank" is synonymous with "national banking association"; "member bank" means and includes any national bank, state bank, or bank and trust company which has become a member of one of the Federal Reserve banks; and "insured bank" includes any bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation."

Title 18, U.S.C.A., Section 1341, Frauds and swindles, provides:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

Concise Statement of Questions Presented for Review.

1. Whether the Fifth Amendment to the Constitution tolerates a conviction obtained in the United States District Court by the knowing use of false evidence, and whether or not, absent such evidence, there is any evidence showing Margaret Wierman to have been guilty of any of the crimes charged.

2. Whether or not such testimony may be used in the conviction of B. L. Suhl, and whether or not such testimony is prejudicial.

3. May a conviction of a defendant be sustained upon the uncorroborated testimony of an accomplice where it appears that said accomplice has committed willful perjury upon some of the material and vital issues in the case, or where the testimony of the accomplice is incredible and unsubstantial.

4. What constitutes incredible and unsubstantial testimony of an accomplice.

5. The United States Court of Appeals erred in holding that the testimony of Robert Goodwin was not incredible and unsubstantial (See Court's Decision, Appendix No. 1) in the light of prior decisions of the Appellate Court and more particularly, *Lyda v. United States,* 9 Cir., 1963, 321 F. 2d 788, 794-95.

6. Insufficiency of the evidence as against Wierman on all counts, and since she is the only officer of the bank involved, must not Count 5 be dismissed as to all defendants.

7. Insufficiency of evidence to warrant conviction on Counts 3, 4, 5 and 6 as against all defendants and

fatal variance between allegations and proof in that none of the Gibson checks were deposited in Suhl's account as alleged, but were all made payable to stock brokers for stock, or to some other person or corporation and cashed or deposited by such persons in their own bank account, all of said checks having been paid in full upon presentation to the Covelo bank.

8. Whether or not the Gibson checks came within the purview of this Honorable Court's decision in *Kann v. U.S.*, 323 U.S. 88; 65 S. Ct. 148, and whether an instruction based upon the *Kann* case should not have been given pertaining to the Gibson check transactions.

9. Improper cross-examination of the defendants, over objection, upon issues foreign to the issues involved in the indictment, and more particularly to the alleged unlawful use of funds of Security and American.

10. Improper cross-examination of defendants, over objection, with reference to the truthfulness of certain findings of fact [Govt. Ex. 55 for identification], made by a Referee in Bankruptcy which were not final and then pending on appeal, and which findings, etc. were reversed by the Court of Appeals for the Ninth Circuit on the 28th day of June, 1965 and only a few days after the jury's verdict herein. That none of the alleged unlawful use of funds was proven as a fact, but all questions propounded were highly prejudicial to the rights of the defendants.

11. That the Government erred in its attempt to prove that the H. Keith Yates transaction was a crime, over objection, and in the government's attempt to show that it was a part of the general alleged conspiracy.

Concise Statement of the Facts.

Obviously, in a concise statement of an extended trial, such as the one here involved, only a small portion of the evidence can be mentioned; yet, we shall endeavor to relate an understandable story in as few words as possible.[1]

B. L. Suhl, Margaret Wierman and Ronald B. Vaughn were tried and convicted of all counts in the indictments.[2] Vaughn did not appeal.

Suhl and Wierman owner a majority (80%) of the stock of Security Currency Services, Ltd., a California corporation, hereinafter referred to as "Security" and all of the stock of American Security Currency, Ltd., an Arizona corporation, herinafter mentioned as "American" and doing business in many other states, but not in California. Both of these corporations were engaged in the money order business, and while neither of the companies were involved in the matetrs alleged in the indictment, each is frequently mentioned and the funds of each were deposited in the Bank of America, Manchester-Vermont Branch, Los Angeles, California, and in the Frontier Bank of Covelo, California, which is a small town located in a remote section of Mendocino County, California, about 30 miles from Ukiah. The majority of the stock in the Frontier Bank was purchased by Suhl and Wierman in 1961, and Wierman left her employment at Security and moved to Covelo, where she became president of the bank and continued in that capacity until some time in 1964 [R. Tr. p.

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[1]We shall quote from certain of the important evidence in Appendix so that a clearer understanding may be had.

[2]Suhl is the son of Wierman, and Vaughn is the husband of the daughter of Mrs. Wierman's husband by a former marriage.

203].[3] Suhl remained in Los Angeles where he was financially interested in and operated Bench Sales, Inc. Suhl was not a director or officer of the bank at any time.

Mrs. Wierman had no prior banking experience and Robert Goodwin[4] who had prior banking experience was employed as cashier of Frontier Bank in 1962 where he remained until 1964 [R. Tr. p. 202].

Both Suhl and Vaughn admit the issuance of the checks with which they are charged, but deny any criminal intent. Each check involved was paid by each of the banks upon presentation, except the last check in the sum of $62,000.00 which was returned at Suhl's request [R. Tr. p. 921, line 5] and the money was wired to the Covelo bank to pay the same. Neither bank suffered any loss [R. Tr. p. 445, line 18, p. 14, line 4].

Suhl requested Vaughn to deposit certain of his checks to Suhl's personal account in the Bank of America above mentioned, and also requested Gibson, who was a close friend and airplane pilot for Suhl, to write certain of his checks drawn upon the Covelo bank account of Gibson and payable to various stock brokers with whom Suhl was purchasing stock in 1963, and also requested Gibson to sign some checks, in blank, to be used for the same purpose [R. Tr. pp. 556-557]. Suhl had purchased heavily in Royal Properties stock and in

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[3]Reference to the Reporter's Transcript is made because there is yet no printed record filed with the United States Court of Appeals.

[4]Robert Goodman was a witness for the government, and the only witness in the entire case who involved Mrs. Wierman with the alleged offenses charged in any way. He was an accomplice, and is here charged with having deliberately testified falsely in an effort to involve Mrs. Wierman.

1963 [R. Tr. p. 789] he had sixty or seventy thousand shares of said stock.

He had been travelling back and forth to the home office of Royal Properties in Phoenix, Arizona, because the stock was failing in price and he was very concerned about losing the money he had invested. He bought more stock in an effort to protect the price and he borrowered money for that purpose. He testified [R. Tr. p. 790] that he borrowed money from the Bank of America, Community Bank of Huntington Park, Bank of La Jolla, Bank of Los Angeles, Fleming Brokerage Co., and from personal friends, including Paul Luce and Mr. Kerstin, who later bought the bank; from Roy Lewis and Richard Gibson [R. Tr. pp. 790-833]. Suhl had several brokerage accounts and had issued quite a number of checks, and his account was overdrawn; the bank called him and advised him of an overdraft of some forty five or forty six thousand dollars [R. Tr. p. 844]. That is when he first asked Ronnie Vaughn to write him a check.

Suhl asked Vaughn to deposit his check for $46,-711.00 (the check of Sept. 20, 1963) in his account at the Bank of America, and he promised Vaughn he would take care of it, that he had money coming from the east and he would wire funds to handle it, that it would be taken care of.

Suhl took care of it by causing a check of $46,711.00 to be deposited in Vaughn's Frontier bank account, and the Suhl check was paid upon presentation at his bank on 1/10/64 [R. Tr. p. 445, line 18]. There were no more check transactions between Suhl and Vaughn until about October 21, 1963.

On or about October 21, 1963, Suhl asked Vaughn to issue another check for $67,500.00 [R. Tr. p. 850, line 13], for the purpose of covering another overdraft. He became so embroiled with the Royal Properties situation that he suddenly found himself in an overdraft situation at the Bank of America [R. Tr. p. 851, line 9]. He was involved in a number of negotiations attempting to sell assets. He said he had to get off of "this terrible margin bind that I was in, through the purchase of the stock", and he thought that each day one or another of the sales would close and that he would be able to wire the money to Covelo to cover [R. Tr. p. 851, line 15].

Thereafter, checks passed between them through the months of November and December, and possibly one or two in January, sometimes the amounts increasing or decreasing as shown by the checks which are in evidence and mentioned in the indictment and in the evidence. In each instance the checks were paid by each bank upon presentation to the bank on which it was drawn, except that the last check of $62,000.00 was returned at the suggestion of Suhl [R. Tr. p. 921, line 5] and he wired the funds to the Frontier Bank to cover, and it was paid on Jan. 10, 1964 [R. Tr. p. 445, line 18].

Neither Suhl nor Vaughn informed Mrs. Wierman of the passing of any of the above checks [R. Tr. p. 865, line 14] except when Vaughn told Mrs. Wierman on November 22, 1963 that Suhl had asked him to write a check.

It is denied that Margaret Wierman participated in any way in either of these transactions, or even had knowledge thereof, except what she may have learned

from a conversation with Vaughn on November 22, 1963. The testimony covering this conversation is set forth in Appendix No. 2 to the effect that while she was in Los Angeles on the date of the assassination of President Kennedy, Vaughn told her that Suhl had asked him to write a check; that she called her son and according to Suhl, his mother told him that Vaughn had informed her that he had asked Vaughn to issue a check against his account in Covelo, and she wanted to know if it was true and if so, why. Suhl told her that he had gotten into a jam with Royal Properties, the brokerage houses were threatening to sell him out, and that he was in a short term bind, and that he would have it taken care of the next day or the day following, that he had money coming in and she shouldn't worry about it at all, that he definitely had it taken care of, that his mother was very unhappy about the stock situation and losses suffered; that her comment was, "Why don't you stick to what you know instead of trying to play someone else's game?" She told Suhl she wasn't going to get into another situation where Ronnie Vaughn would be carrying an account at the Frontier Bank which was in reality his own account, and that she would not be a part of it. "That the Banking Department had asked her to close Suhl's account, and that if he was going to have Ronnie write checks it might as well be my account there and she would resign. She said that unless it was stopped and that he wouldn't have Vaughn write any more checks, she wouldn't go back to the bank at all." Suhl told her he had money coming in and he was sure that would be the end of it.

The same day she also called Goodwin at Covelo and asked him why he would okay such a check without first consulting her, and Goodwin advised her that he had

worked it out with Suhl. (See Appendix No. 2 and pages of Reporter's Transcript therein given.) Goodwin admits Mrs. Wierman called him [R. Tr. p. 344, line 11, to p. 345, line 1].

Gibson's Check Transaction.

The Gibson transaction was in no way connected with the Vaughn transaction. It was a separate arrangement between Suhl and Gibson, whereby Suhl requested Gibson to permit him to use his checks to purchase stock, and agreed to see that the same were paid upon presentation.

Stock was purchased with the Gibson checks [R. Tr. p. 791; See also Ex. 49] and all of the Gibson checks were made directly to stock brokers, such as E. F. Hutton & Co., Harbison & Henderson, M. S. Walker, Fleming Brokerage Co., etc., except one of Gibson's checks payable to Bank of America in the sum of $50,000.00 was cashed at the Bank of America and the proceeds were used by Suhl to purchase stock [R. Tr. p. 794, line 25]. Also, there was a small check of Gibson's made payable to Wetzel [R. Tr. p. 795] for a trip to Lucerne to survey the situation to see if a branch bank should be established at Lucerne. Gibson was a stockholder in the bank and had made some money on his stock. Gibson agreed with Suhl to pay Wetzel.

Suhl signed Gibson's name to two checks [R. Tr. p. 796]. Suhl testified that he called Gibson and asked him to meet Suhl at the brokerage firm, and Gibson informed Suhl that he was tied up and told Suhl "You can sign my name as well as I can," so Suhl signed those two checks and Gibson made no complaint whatsoever.

All of the Gibson checks were paid upon presentation, with the possible exception of two small ones which were paid upon being presented a second time. None of them were ever deposited in Suhl's bank account, as alleged in the indictment.

There were no other check activities between Suhl and Gibson.

There is also evidence of Gibson acquiring some of the stock purchased with these checks, although Suhl reimbursed Gibson in full for all checks advanced by him [R. Tr. p. 792; R. Tr. pp. 556-596; R. Tr. p. 780, line 12].

[See also testimony of Milton Wilks from E. F. Hutton & Co., R. Tr. p. 778].

Yates Check Transaction.

The H. Keith Yates transaction was entirely separate from the other transactions and had no relation whatever to either the Suhl-Vaughn or Suhl-Gibson transactions [R. Tr. pp. 594-608].

Suhl had agreed to secure for Yates a loan of $11,000.00 at the Frontier Bank. He had Yates sign an application for a loan, a note, and a signature card for a checking account [R. Tr. p. 599, line 10] and sent these to his mother at Covelo. Yates, feeling that the loan would be honored, wrote a check for $10,800.00.

Mrs. Wierman rejected the loan because Yates lived out of the bank's loaning area and when Yates' check arrived at the bank, there was no bank account. Upon the arrival of the check, Suhl was informed and immediately caused the Bank of America to wire the Frontier Bank $11,000.00 to be deposited to Yates' account,

which was so deposited [R. Tr. p. 80]. Suhl also later secured a loan for Yates at the Metropolitan Bank in Hollywood [R. Tr. p. 601, line 13; also p. 602, line 16].

False Testimony of Robert Goodwin.

Robert Goodwin was employed as cashier of the Frontier Bank at Covelo, California in November, 1962 and served in this capacity to July, 1964 [R. Tr. p. 202, line 22]. He also was named as Vice President in January, 1964 [R. Tr. p. 203, line 5].

According to his own testimony, Robert Goodwin was an admitted accomplice to any possible crime committed, having been deeply involved with the making of every check signed by Suhl or drawn upon his account, even to the extent of signing Suhl's name to some of the checks [R. Tr. p. 211, lines 1-4].

Goodwin testified first with respect to the check of September 20, 1963 for $46,711.00 [Beginning R. Tr. p. 213, line 21]. He testified that when it came in for payment he approached Mrs. Wierman [R. Tr. p. 214, line 22].

> "She said she would contact Mr. Suhl, which she called him on the telephone in my presence, and then she produced a check, signed it and gave it to me to deposit in the account of R. B. Vaughn for this large check that had been drawn by him." [R. Tr. p. 215, lines 1-6].

The deposit slip was prepared by Goodwin [R. Tr. p. 220, lines 24-25] for the $46,711.00 check and shows date September 20, 1963 [R. Tr. p. 221, line 2]. See also [R. Tr. p. 211, lines 5-25] where he definitely says that Mrs. Wierman signed this check.

There had been a mistrial in this case where Goodwin had admittedly testified a few days before that after telling Mrs. Wierman that this check for $46,711.00 came in, that "She then obtained funds from Suhl in Los Angeles by way of wire transfer." (Emphasis ours). [See R. Tr. p. 287, lines 1-11].

Upon defendant's motion, they received from the Government a written statement given to the Federal Bureau of Investigation on or about June 3, 1964 [R. Tr. p. 233, line 18] which was Ex. 40-A [Beginning R. Tr. p. 287, line 10] wherein the witness Goodwin stated:

> "Shortly thereafter Mr. O'Kane of the State of California Banking Authority advised me to close this account. I did as instructed, and as soon as it was closed, large checks began coming through which were written on the account of Ronald V. Vaughn. This was in September, 1963. Ronald Vaughn was Mrs. Wierman's son-in-law and was employed by Bud Suhl in Los Angeles. I believe he is currently employed by Suhl in the United Bench, 5840 Southwestern Avenue, Los Angeles.
>
> "The first few of these large checks which came in drawn on Vaughn's account were N.S.F. checks, inasmuch as his balance was not sufficient to cover them. Margaret Wierman wasn't there, so I held them in the rejected check register for several days. I didn't want to bounce them because I knew Vaughn was her son-in-law and I didn't want a repeat of the chewing out I had received from Suhl.
>
> "I recall holding a written check to be charged on 9-20-63 to Vaughn's account in the amount of $46,711.00 in the rejected check register on 9-18

and 9-19-63 until receiving funds to cover this amount on 9-20-63. This check actually came in on 9-18-63 but wasn't posted to the account until 9-20-63.

"When Margaret Wierman returned she had a book of blank checks which had already been presigned by Bud Suhl. These checks were universal checks and could be written on any bank.

"From there on whenever a large check would come in to be charged against Ronald Vaughn's account I would be informed of this by the girl who was handling the incoming cash letter. I knew Vaughn did not have a large enough balance in his account to cover this check, because he never carried balances this large. So I would take this check to Margaret Wierman."

"Now, did you make that statement concerning those checks to the F.B.I. Agents at that time? A. I did." [R. Tr. p. 290, line 19, to p. 292, line 4].

Goodwin testified that Wierman signed Suhl's name to checks on one or more than one occasion [R. Tr. p. 211, line 15]. At other times Suhl had signed the checks and these would be handed to Goodwin and he would fill in the date and the amount and the payee [R. Tr. p. 211, lines 22-25]. Goodwin says these checks would be handled to him by Wierman [R. Tr. p. 212] and there were times when Goodwin signed Suhl's name, himself [R. Tr. p. 212, lines 19-25]. Goodwin, under forceful cross-examination, finally admitted that he, himself, signed this check. Because of the importance of this admission we quote: [R. Tr. p. 316, lines 4-21].

"Mr. Lally: Q. I would like you, sir, to look at the lower corner of this exhibit and tell me what

initial is in the lower corner below the signature? A. That is my initial.

Q. And the check is filled out, is it not, in your handwriting? A. It is.

Q. Including the signature, is it not? A. Yes.

Q. Is that not correct, sir? A. It is.

Q. In other words, that little 'r' signifies on that check that you put the signature on there, does it not? The same as on all the other checks you told me? A. That is correct.

Q. All right. This check is dated 9-20-63 and it is in the amount of $46,711, is it not? A. It is."

At [R. Tr. p. 462, line 21, to p. 463, line 1] Goodwin said:

"A. This is the first check which was used to credit the account of R. B. Vaughn on 9/20 of '63, and I had a conversation with Margaret Wierman about this. This is a traced signature, and I can't recall how that happened, but at any rate the conversation that transpired over this was between Margaret Wierman and B. L. Suhl, and not myself."

And, at [R. Tr. p. 464, line 15, to p. 465, line 3] Goodwin said:

"Mr. Utley: Q. Did I understand you to say that you discussed the writing of this $46,711 check against the account of B. L. Suhl in his presence with Margaret Wierman? A. No.

Q. Was B. L. Suhl there? A. No.

Q. Did you have any discussion with Margaret Wierman about writing that check in the presence of B. L. Suhl? A. No.

Q. And you said that the signature had been traced. Did you trace it? A. I believe I did. I forget—I think so, I don't know. This first has been retraced by pencil and then re-done in ink. I don't recall, I couldn't recall that."

Goodwin testified on direct examination [R. Tr. p. 236, line 18] that Exhibit I is a check dated 12-2-63 in the sum of $131,996 and that the payee is the Frontier Bank and the maker B. L. Suhl, that he did all of the writing on this check except the signature, and that Margaret Wierman signed B. L. Suhl's name on the check in his presence [R. Tr. p. 238, lines 9-11] to cover two checks which had come in on that day [R. Tr. p. 238, lines 14-24].

On cross-examination beginning [R. Tr. p. 281, line 14, to pp. 282 and 283] Goodwin testified positively that Mrs. Wierman signed Suhl's name to the check, Exhibit I, he said that she was in the bank on December 2, 1963, the day he filled out the check, and when his attention [R. Tr. p. 283, line 4] was called to the fact that she was in a lawyer's office in Los Angeles on December 2, 1963 and participated in the sale of the assets of Security and American, Goodwin stated that he would be surprised to learn that because "She couldn't be in two places", that "She was in the Frontier Bank" and that she signed the signature to Exhibit I on that day in front of him on "December the 2d".

In connection with this exhibit it will not be overlooked that Mrs. Wierman denied signing Suhl's name to any of these checks or having anything to do with any of them, or having knowledge thereof, and of her testimony that she was in Los Angeles on December 2, 1963

at the office of Ernest E. Johnson [R. Tr. pp. 768-777] in connection with the sale of the money order companies, and testifying to certain receipts which she produced received by her for gas etc. while in Los Angeles; [R. Tr. p. 1099, line 15] also, the testimony of Sherwood Morrill [R. Tr. pp. 868, 876] the handwriting expert, who testified that the signature of B. L. Suhl on Exhibit I or none of the other checks shown him was written by Mrs. Wierman.

See also testimony of Ernest E. Johnson [R. Tr. p. 772, lines 9-14] which establishes the fact that Mrs. Wierman was in his office in the afternoon of December 2, 1963 attending a conference held between 1:45 p.m. and 8:00 p.m.

Further Contradictions.

Goodwin, under cross-examination [See R. Tr. p. 348, line 14] admits having previously testified that the check [Ex. D-W] which is dated 11/22/63, was given to him by Marge Wierman there in the bank; that when one of Vaughn's checks came in he walked over to her desk and told her that he had a Vaughn check, and that she reached in her drawer and gave him the check on November 22, 1963. He had just previously testified on cross-examination [See R. Tr. p. 344] that Mrs. Wierman was not present in the bank at all on that day; that he had talked to her on that day by long distance telephone from Los Angeles, and there is no question about it now, "none whatsoever".

Mrs. Wierman testified [R. Tr. p. 1085, line 1] that on November 22, the day of the assassination of President Kennedy, she was at the home of Mr. and Mrs. Richards in Los Angeles. That that was the day

that Vaughn had talked to her about Suhl having requested him to write a check and Mrs. Wierman on the same day called Goodwin, talked to him and protested that he would honor such a check without consulting her, and she also called her son on the same day and rebuked him concerning the check which Vaughn mentioned to her.

Other Contradictory Statements of Goodwin.

Goodwin testified to meeting Suhl at the Mark Hopkins Hotel in connection with some stock in October, 1963 [R. Tr. p. 412, line 18]. He was also there in connection with efforts being made to establish a branch bank, and he was there to meet the Superintendent of Banks [R. Tr. p. 413].

Suhl stayed at the Mark Hopkins, and Goodwin had lunch with him and met Mr. Dalton.

Goodwin denied that at the time he saw Suhl at the Mark Hopkins, Suhl gave him any signed checks. Goodwin was shown Exhibit "T-W" for identification, which was a Suhl check cashed at the Mark Hopkins, dated October 19, 1963, but Goodwin says that does not help him to fix the day in October he met Suhl.

Then Exhibit "U-W" was marked for identification, which was a check of Suhl's dated October 21, 1963 and payable to Mr. Dalton for $1968.00 [R. Tr. p. 416].

Goodwin's attention was called to the fact that the printed number on the check given to the Mark Hopkins [Ex. "T-W"] was 4075, and that the check payable to Dalton was numbered [Ex. "U-W"] 4085 [R. Tr. p. 417, lines 23-25]. That Exhibits A, B, C, D and E [R. Tr. p. 416, line 20; p. 417, line 9] were

printed numbers from "79 to 83" in between the checks written to Mark Hopkins and to Mr. Dalton; that the checks [Exs. A, B, C, D and E] are all filled out in Goodwin's handwriting [R. Tr. p. 418] and were dated on different dates from 11-5-63 to 11-27-63, yet Goodwin denies that he received these checks from Suhl in San Francisco when they met at the Mark Hopkins. He says these checks were sent to him by Margaret Wierman [See also R. Tr. beginning p. 483, line 10].

Suhl testified that he took these checks [Exs. A, B, C, D and E], from his checkbook at the Mark Hopkins, after he had written Check No. 4075 to the hotel, signed them and gave them to Goodwin after he had written the check to Mark Hopkins and before he gave Dalton Check No. 4085 in the sum of $1,968.00 for stock [R. Tr. p. 835, line 7, to p. 836, line 11]. Goodwin's attention was called to the fact that Exhibits, A, B, C, D and E were all printed checks of B. L. Suhl, with printed numbers from "79 to 83" and that the Suhl check for $1968.00 payable to Dalton was dated October 21, 1963 and was No. 4085; he nevertheless held to his statement that Mrs. Wierman mailed these checks to him.

The above testimony of Goodwin attempting to involve Mrs. Wierman is that which we contend and urge is clearly willful perjury, and is incredible and unsubstantial on its face and does not and cannot sustain a judgment of conviction against Mrs. Wierman.

Testimony of Other Bank Employees.

Anna Ballentine, Jeanne Robertson and Anna Mae Croteau [R. Tr. pp. 90, 106 and 128] all called by the government as witnesses, and all employees of the Frontier Bank, either as bookkeepers or tellers, testified with relation to the Vaughn and Gibson accounts at the bank. None of said witnesses involved Mrs. Wierman in any way. They always talked with Robert Goodwin and he always directed them and gave them instructions.

Tom Luther was called by the government as a witness and gave certain testimony which was stricken.

The witness said he saw some checks in Mrs. Wierman's desk which had the signatures of Suhl and Vaughn on them [R. Tr. p. 145, line 10] which obviously were checks or money order checks of Security which required these two signatures, and which were used by the bank in the transfer of company funds.

So the only evidence which in any way involves Mrs. Wierman is that of Goodwin, which clearly shows that he attempted to involve Mrs. Wierman with the signing of a check which he later admits he, himself, signed, and also with signing of other checks which the handwriting expert, Suhl and Mrs. Wierman, all testify that she did not sign, supported with the further evidence of Mr. Johnson that Mrs. Wierman was in his office on December 2, 1963, the date one of the questioned checks was issued, and by Goodman's own later admission that Mrs. Wierman called him from Los Angeles on November 22, the date another questioned check was issued, plus all the receipts, etc. which Mrs. Wierman offered showing that she was in fact in Los Angeles on the questioned days.

Testimony of Sherwood Morrill an Examiner of Questioned Documents.

Sherwood Morrill, an examiner of questioned documents who has been with the California State Bureau of Criminal Identification for over 31 years [R. Tr. pp. 868 and 869] examined the check dated December 2, 1963, Exhibit "I" and the Exhibit "J" [R. Tr. p. 870, line 12, and p. 872] and [R. Tr. p. 873, line 4, to p. 875, line 4] as well as the other checks which Goodwin testified Mrs. Wierman signed, and Morrell testified that Mrs. Wierman did not, in his opinion, sign any of the checks identified by Goodwin as having been signed by Mrs. Wierman.

Other Documentary Evidence.

Mrs. Wierman was away from Covelo and in Los Angeles on many days which Goodwin testified to her being in Covelo. She also established this by rather convincing proof in the form of charged gasoline tickets, receipts for purchases at Los Angeles stores, hotel bills, telephone calls and similar documentary proof of her presence in Los Angeles, including the days upon which Goodwin claimed she was in Covelo signing Suhl's name to checks [R. Tr. beginning p. 1082]. The many receipts produced by Mrs. Wierman fully support Mrs. Wierman's testimony that Goodwin deliberately testified falsely aout her presence in Covelo on many important dates.

Summary of Argument.

We respectfully urge that the testimony cited above clearly shows that Robert Goodwin was the only witness who involved defendant Margaret Wierman in any way; and that his testimony was clearly false in relation to certain alleged activities of Margaret Wierman. Therefore, the conviction of Margaret Wierman cannot stand under the "due process" clause of the Fifth Amendment of the Constitution, and under the decisions of this Honorable Court in *Miller v. Pate,* 386 U.S. 1, 87 S. Ct. 785; *Napue v. People of the State of Illinois,* 360 U.S. 264, 79 S. Ct. 1173, and other decisions of this Honorable Court cited in our brief herein, which is shown in Appendix No. 4. See also our brief, Appendix No. 4, in support of our contentions upon other issues involved.

Respectfully submitted,

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Attorney for Petitioners.

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By ERNEST R. UTLEY,
Of Counsel.

APPENDIX NO. 1.

Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

B. L. Suhl, et al., Appellant, vs. United States of America, Appellee. No. 20,672.

[February 6, 1968]

Appeal from the United States District Court for the Northern District of California, Northern Division. (Now the Eastern District of California).

Before: Browning and Duniway, Circuit Judges, and Byrne*, District Judge.

DUNIWAY, Circuit Judge:

B. L. Suhl and Margaret Wierman were each convicted on all counts of a six-count indictment and they appeal. We affirm.

Named as co-defendants were Ronald Vaughn and Richard Gibson. Counts one through four charge violations of 18 U.S.C. § 1341, mail fraud; count six charges a conspiracy to violate the same section; count five charges violation of 18 U.S.C. § 656, misapplication of bank funds. The first four counts all charge a "'check kite' scheme, whereby false credit would be obtained by exchange and passing of worthless checks between two banks." Count one states that the scheme was that checks were drawn on the account of Suhl at a Los Angeles branch of the Bank of America and deposited in the account of Vaughn at the Frontier

*Hon. William M. Byrne, Senior District Judge, Central District of California, sitting by designation.

Bank of Covelo, in Mendocino County, California, when Suhl's account did not contain sufficient funds to cover them, and that checks were drawn on Vaughn's account at Covelo and deposited in Suhl's account at Los Angeles when Vaughn's account did not contain sufficient funds to cover them. It then alleges that these two defendants "utilized the span of time involved in the normal passage of mails between Covelo and Los Angeles . . . . to accomplish delay in the posting of checks to the. . . . respective accounts." Finally, it charges that Suhl, on November 13, 1963, deposited in his Los Angeles account a check drawn by Vaughn on his Covelo account in the sum of $55,000, and caused the Los Angeles bank to send it by mail to Covelo at a time when Vaughn's Covelo account contained less than $600. Wierman and Vaughn are charged with aiding and abetting Suhl. Count two is identical except that its specific charge is that Wierman, on November 18, 1963, deposited to Vaughn's Covelo account a Suhl check drawn on his Los Angeles account in the sum of $55,000, when Suhl's balance was less than $200. Suhl and Vaughn are charged as aiders and abettors of Wierman.

Counts three and four are similar, but involve Suhl, Wierman and Gibson. The specific act charged in count three is the deposit by Suhl, in Los Angeles, on October 28, 1963, of a Gibson check drawn on the Covelo bank for $50,000, when there was less than $50 in the Gibson account. Wierman and Gibson are named aiders and abettors. The specific act charged in count four is the deposit by Wierman in the Gibson account at Covelo on October 31, 1963 of a Suhl check drawn on his Los Angeles account for $50,000, when

there was less than $13,000 in the Suhl account. Gibson and Suhl are named as aiders and abettors.

Count six charges all four defendants with conspiracy, and alleges four overt acts by Wierman: (1) Ordering an employee of the Covelo bank on October 2, 1963, to hold a check for $10,800, purportedly drawn on the account of one Yates; (2) having in her possession, during September-December, 1963, at the Covelo bank, a book of blank checks, signed by Suhl; (3) causing a check signed by Suhl to be filled out, on December 10, 1963, for $132,000 and deposited in Vaughn's account; (4) causing a check signed by Suhl to be filled out, on October 1, 1963, for $17,780, and deposited in Gibson's account.

Count five charges that in the period September-December, 1963, Wierman misapplied funds of the Covelo bank by causing a series of Suhl checks, drawn on his Los Angeles account, to be credited to Vaughn's account, knowing that Suhl's account did not have sufficient funds to cover, and causing withdrawals of the same amounts from Vaughn's account, knowing that his account had insufficient funds. Suhl and Vaughn are named aiders and abettors.

The evidence is voluminous, and, when examined in the light most favorable to the government, is sufficient to sustain the convictions on all counts. We state only so much as is necessary to explain our disposition of the points raised on appeal, which we will consider separately.

By way of background, Wierman and Suhl are mother and son. They owned the Frontier Bank of Covelo. Covelo is a small country town in a remote

section of northern California, several hundred miles from Los Angeles, a fact that contributed substantially to the success of the check kite scheme. Wierman was president of the bank. They had other irons in the fire, among them two companies engaged in the money order business, Security Currency Services, Ltd., a California corporation ("Security") and American Security Currency, Ltd., an Arizona corporation ("American"). They owned 80% of the stock of Security and 100% of the stock of American. Vaughn was the husband of Wierman's step-daughter and an employee of Security in Los Angeles. Gibson was a friend of Suhl and frequently acted as pilot of his airplane. Suhl did not have a checking account at the Frontier Bank. Vaughn and Gibson each did.

Suhl claimed a net worth of $800,000. He had plunged rather heavily in the stock market. Among his investments was a large block of stock of a corporation called Royal Properties, and in late 1963 the price of the stock was falling. He was in danger of being wiped out. He undertook to borrow from every possible source, and he was negotiating to sell the Frontier Bank and Security and American. His account at the Bank of America was overdrawn, and this was the beginning of the check kite scheme.

Vaughn, in Los Angeles, and at Suhl's request, wrote several checks on Vaughn's account at the Frontier Bank, payable to Suhl, when that account contained insufficient funds to cover the checks. Suhl immediately deposited the checks in his account at the Bank of America and used the money in his stock market activities. When one of Vaughn's checks arrived at the Frontier Bank, it was brought to the attention of the

cashier, Robert Goodwin. A check drawn on Suhl's account at the Bank of America and payable to Vaughn was then prepared at Covelo and deposited in Vaughn's account, and Vaughn's check to Suhl was paid. In at least three cases, the Vaughn check to Suhl was held in what was called the "rejected check register" for one to three days before payment. The Suhl check to Vaughn was then sent to the Bank of America where it was, with the exception of the last check, paid upon receipt. The delay incident to sending the checks through the mails enabled Suhl to enjoy the use of cash in the amount of the various Vaughn checks for several days.[1]

The Suhl-Gibson transactions were somewhat different. Between September, 1963, and January, 1964, Gibson, at Suhl's request, signed several checks drawn on his Frontier bank account, some payable in blank and some payable to brokerage houses. The checks were used by Suhl for the purchase of stocks. One $50,000

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[1]The following is taken from an exhibit prepared by an F.B.I. agent detailing the Vaughn-Suhl check transactions:

"Amount of check	Period in Float
$ 46,711	? — 9/26/63
21,000	10/24—10/31
80,000	11/ 1—11/ 8
55,000	11/ 5—11/13
80,000	11/11—11/19
55,000	11/13—11/21
86,700	11/19—11/27
55,000	11/21—12/ 3
86,700	11/27—12/ 6
10,500	12/ 3—12/16
132,000	12/ 6—12/16
20,000	12/10—12/18
125,000	12/16—12/26
70,000	12/18—12/31
77,000	12/26— 1/ 6/64
70,000	12/31— 1/ 9
62,000	1/ 6— ? (Check dishonored)"

Gibson check, payable to the Bank of America, was deposited in Suhl's Los Angeles account. The Gibson checks were for large amounts, but the average balance in the Gibson account was not over $100. The reason for using Gibson's Frontier bank account was to extend the time necessary for the checks to clear. When a Gibson check was presented for payment at the Frontier Bank, it was handled in substantially the same manner as the Vaughn checks, although wire transfers from Suhl were also used to cover some Gibson checks.

A third transaction, alleged as one of the overt acts in count six, involved one Yates, who was an acquaintance of Suhl's and had had occasion to use money orders of Suhl's company. Yates had purchased a large block of Royal Properties stock on margin. Suhl suggested to Yates, in Los Angeles, that he clear the margin account and demand delivery of the stock, the purpose being to force short sellers to buy in and thus raise the price of the stock. Yates had insufficient funds to clear the margin account and Suhl suggested that Yates execute a money order for the necessary amount. He then suggested that Yates apply for a loan from the Frontier Bank to cover the money order, using the stock as collateral. Yates executed the money order for the stock and filled out an application for a loan at the Frontier Bank. He also signed a signature card for a checking account at that bank. He then gave to Suhl a check drawn on the Frontier Bank to cover the money order. Suhl promptly deposited Yates' check in his account at the Bank of America. The loan application and the signature card were then mailed to the Frontier Bank, where an account was to be established

for Yates after the loan was granted. The loan was not approved because Yates lived out of the bank's "loan area." Suhl then wired funds to Covelo in the amount of the requested loan for deposit to Yates' "account." Yates' check, which had been held in the rejected check register, was then paid. Suhl then secured for Yates a loan at a Hollywood bank and Yates repaid Suhl.

We turn to the points raised on appeal.

1. *Was Wierman entitled to a judgment of acquittal?*

Wierman argues that her conviction must rest on the testimony of Goodwin, the cashier of the Frontier Bank. She then urges that he was an accomplice, obviously interested in cooperating with the prosecution, that he perjured himself on the stand, and that this testimony is unworthy of belief.

We start with the established rule that "in the federal courts a conviction may be based on the uncorroborated testimony of an accomplice . . . even though the accomplice is in a position to gain favors from the government by his testimony . . ., and even though there are inconsistencies in his story, . . . so long as it is not 'incredible or unsubstantial on its face.' . . . Obviously there comes a point when the witness' qualifications are so shoddy that a directed verdict of acquittal should have been granted. . . ." *Lyda v. United States,* 9 Cir., 1963, 321 F.2d 788, 794-95.

Goodwin, on direct, implicated Wierman in several respects as follows: He was acting at all times pursuant to the express instructions of Suhl and Wierman. The first Vaughn check was brought to his attention by one of the bank employees. Goodwin took the check to

Wierman, who called Suhl, and then produced a check and signed Suhl's name to it in his presence. At this time, she had no presigned Suhl checks, although she later arranged to have some mailed from Los Angeles. Suhl called Goodwin from Los Angeles and instructed him to obtain presigned checks from Wierman. Wierman may have been absent from the bank on some of the dates on which checks were prepared, but she supplied the signature to some of the chceks, specifically the first Vaughn check (Exhibit S) and a later Vaughn check (Exhibit I). Both were signed by Wierman in Goodwin's presence. With regard to the Yates transaction, Wierman had, pursuant to Goodwin's inquiry about the Yates check, queried Suhl about that check. Suhl then wired cash to cover the check. Finally, Wierman told Goodwin that Suhl's last check had bounced and admitted at that time that the transactions had constituted a "kite."

Goodwin was subjected to a most effectiev cross-examination. In attacking Goodwin's credibility, defense counsel developed Goodwin's status as an accomplice, his incentive to cooperate with the government, his desire to please Suhl, and his indebtedness to Wierman. His main attack, however, centered around the particular instances in which Goodwin had testified that Wierman had actively participated in the transactions.

With regard to the first check, which Goodwin testified was signed by Wierman, counsel read Goodwin's testimony at the earlier trial (which had ended in a mistrial when a juror engaged in a conversation with a government witness) to the effect that the money to cover this check was obtained by wire transfer from

Suhl in Los Angeles. He then read a statement given by Goodwin to the F.B.I. which presented a different version of the incident. Goodwin admitted that he had been mistaken in his earlier statements, but steadfastly maintained that Wierman had signed Suhl's name to the first check. After further cross-examination, however, he admitted that he had signed the check. Counsel also introduced an inconsistency between Goodwin's present testimony and that given at the earlier trial, regarding a check written on November 22, 1963, and a similar inconsistency with regard to the rejected check register.

Counsel examined Goodwin on the various checks, asking whether Wierman was present at the bank or had signed the checks. In most cases, Goodwin could not recall, giving the obvious impression that he did not wish to be pinned down for fear of being contradicted at a later time. Counsel then read the somewhat inconsistent testimony given by Goodwin at the previous trial. Goodwin testified that Wierman had signed another check, designated Exhibit J.

A handwriting expert testified that none of the checks had been signed by Wierman. With regard to Exhibit I, which Goodwin testified was a check signed by Wierman in his presence, testimony was introduced to show that she was in Los Angeles on that day, which was also the day she had allegedly signed Exhibit J.

Goodwin's testimony, if believed, was adequate to implicate Wierman. Indeed, it is practically the only evidence of her involvement. Three bank employees testified that they had not mentioned the matter of the Vaughn and Gibson checks to Wierman, but had brought them instead to Goodwin and had received

their instructions from Goodwin. Vaughn mentioned one check to Wierman and testified that she had been quite upset upon learning of the transaction. Neither Gibson nor Yates mentioned Wierman in their testimony. Tom Luther, an employee at the bank, did testify that he had seen checks with Suhl's signature on them in Wierman's desk.

Suhl testified that he did not want his mother to know of the transactions because she disapproved of his stock market activities. When she did find out from Vaughn, she chastized him and he promised not to do it again, a fact testified to by both Suhl and Wierman. She, of course, denied any knowledge of the checks, with the exception of the one check noted above. Suhl also testified that both series of presigned checks allegedly mailed by Wierman were in fact given to Goodwin by Suhl personally.

It is difficult to conclude that Goodwin's testimony is "incredible or unsubstantial on its face." It did contain internal contradictions and inconsistencies, and defense counsel developed several external inconsistencies, but these were not such as to completely destroy Goodwin's credibility. His main contention—that Wierman was actively involved—was never retracted or demonstrated to be patently false, and the jury could have believed it, regardless of his apparent confusion or uncertainty as to the details of that involvement. Indeed, the case with which defense counsel was able to elicit inconsistencies and contradictions militates against the conclusion that Goodwin's testimony was a fabrication. The effect of his motives, inconsistencies, and contradictions on his overall credibility is uniquely a jury question. The jury was instructed that the testimony of an

accomplice was to "be received with caution and weighed with great care," and was also instructed on impeachment by prior inconsistent statements. A standard instruction on credibility of witnesses was also given. It must be assumed that the jury followed these instructions in assessing Goodwin's testimony.

The jury evidently believed enough of Goodwin's testimony to convict. The Judge, who refused to grant a judgment of acquittal, must also have felt that the jury could properly have believed Goodwin. Both the jury and the Judge saw and heard Goodwin testify; we did not. The court did not err in denying Wierman's motion for judgment of acquittal.

2. *Was it error to deny a motion to strike the evidence of the Yates transaction?*

The answer is no. It was just one more of a series of transactions whereby Suhl got the use of funds, by means of an N.S.F. check drawn on the Covelo Bank by reason of time consumed in the passage of the mails. It was properly charged as an overt act in count six. Moreover, even if we were to assume that the transaction itself was not a violation of federal law, or that it was not in furtherance of the conspiracy, it is still admissible to prove the intent and purpose of the defendants in engaging in the conspiracy—*i.e.*, to obtain temporary use of funds to prevent the price of Royal Properties stock from falling. See *e.g., United States v. Marchisio,* 2 Cir., 1965, 344 F.2d 653, 667.

3. *Did the trial court err in admitting evidence of the Suhl-Gibson transactions and in refusing to grant a motion for acquittal on the counts involving those transactions?*

We might dispose of this claim on the ground that both appellants received concurrent sentences on counts one to five inclusive. See, *e.g., Chavez v. United States,* 9 Cir., 1967, ... F.2d ..... (decided December 12, 1967). But in any event the claim is without merit. The $50,000 check transactions charged in the indictment did constitute a "kite." The essence of counsel's argument is that since each check was made out to a third party that party became the owner of the check and could do with it as he pleased. Thus, whatever scheme existed came to fruition before the mails were used, and, relying on *Kann v. United States,* 1944, 323 U.S. 88, appellants could not be guilty of mail fraud. Reliance on *Kann* is misplaced. That case involved fraudulent diversion of corporate funds, the scheme being complete when the corporation's checks were cashed. The bank's later use of the mails to collect the checks was irrelevant to the scheme and was thus held to be an insufficient basis upon which to base a mail fraud conviction. The Court specifically distinguished cases where use of the mails is an integral part of the scheme. 323 U.S. at 94-95. In the present case, an essential part of the charged transaction was the delay incident to the necessity of mailing the Gibson checks to Covelo. This delay enabled Suhl to deal in Royal Properties stock with non-existent funds.

Appellants argue that there was a fatal variance between the proof and the indictment in that the $50,000 Gibson check was not deposited in Suhl's account, but was cashed by Suhl. But there is evidence to the contrary which the jury evidently accepted.

Since the evidence was properly received, it is no answer to say that it was "prejudicial". No doubt it

hurt the defendants, but so would evidence in a murder trial that a witness saw the defendant shoot the deceased. That does not make it inadmissible on the ground that it is "prejudicial."

4. *Did the trial court err in permitting the prosecution to cross-examine appellants on their actions in relation to the money order companies?*

Both American and Security had sizeable deposits at the Frontier Bank and at the Bank of America in Los Angeles. At the time of the trial, both corporations and Suhl and Wierman were engaged in bankruptcy proceedings in the federal courts. See *Suhl v. Bumb,* 9 Cir., 1965, 348 F.2d 869. This case also contains a summary of appellants' alleged actions vis-a-vis these companies, which actions were the subject of the cross-examination complained of *Id.* at 870-71. For our purposes, it is sufficient to note that appellants were charged with intermingling their personal funds with the funds of the corporations and with making improper transfers of funds between the two corporations. Their control of the Frontier Bank was claimed to be a key factor in these alleged acts.

It should be noted that the money order companies were frequently mentioned in passing or as background throughout the trial. None of this testimony could be regarded as prejudicial, nor could it be regarded as introducing the issue of the money order companies into the case. In fact, when government counsel tried to develop the details of the situation described above during the direct examination of Goodwin, the court refused, on its own motion, to let him do so. The court said, "we ought to stick to the charges we have here."

The reference to the money order companies objected to on his appeal came up when the defense put Suhl and then Wierman on the stand. On direct, counsel for Suhl almost immediately elicited the following testimony:

> "Q. When did you enter the business of Security Currency?
>
> A. In 1956.
>
> Q. And in what way did you enter that business?
>
> A. I borrowed $1200.00 and signed a note for approximately $5,000 for a half interest in the business.
>
> Q. And what size was it at that time?
>
> . . . .
>
> Mr. Mason: Objected to, no probative value in this line of questions.
>
> Mr. Utley: Well, I want to show, your Honor, that the business was small at the time and it grew.
>
> The Court: How does that help us with the issues in this case?
>
> Mr. Utley: Well, it leads up to what happened.
>
> Mr. Mason: It opens the door to my completing the story. I shall withdraw my objection."

Counsel then developed Suhl's dealings in Royal Properties stock as background for the writing of the various checks. In response to an objection as to probative value, he argued:

> "[H]e was busily engaged all this time in trying to dispose not only of the Security Currency business, but also of the bank stock, and working very hard on it, and we will show that early in January, 1964, when he got his money for the bank stock he immediately paid off the last check and that was the end of it.

I think that the jury is entitled to all this information purely as going to the question of Mr. Suhl's intent. He has the right to explain what he did so the jury can arrive at whether or not he had a criminal intent."

The court allowed the testimony "as long as it is in some way connected with [these transactions]." Counsel then developed the various loans incurred by Suhl in the course of his stock market dealings.

Counsel next went over the particular check transactions and other matters. When asked to explain the circumstances of the first Vaughn check, Suhl said:

"I was involved in any number of negotiations attempting to sell assets that I had to get off this terrible margin bind that I was in through the purchase of the stock, and I thought that each day one or another of the situations would close and that I would be able to wire the money to Covelo to cover.

. . . .

Well, I had been negotiating the selling of the money order companies. I had been in New York and had a man come out from Baltimore. I had promises of substantial moneys into the hundreds of thousands of dollars. . . ."

Suhl then elaborated on his financial condition:

"Q. What was your financial condition, Mr. Suhl, at the [time] you wrote this check for $67,500 in October, 1963.

Mr. Mason: Objection as irrelevant.

The Court: Overruled.

. . . .

A. . . . . my net worth to be approximately $800,000.00.

Q. What did your assets consist of at . . . [the time when this interchange of checks first started]?

A. I had at that time approximately 200,000 shares of Royal Properties, I had my home and my ranch in Oregon, Timber ranch and two office buildings. I owned 50 per cent of one money order company and about 50 percent of another. . . ."

Counsel developed the circumstances of the sale of the Frontier Bank in January, 1964. Suhl's expectation of receiving funds from the sale of the money order companies was again mentioned. Wierman's counsel then examined Suhl, developing Wierman's financial interest in the money order companies. Vaughn's counsel briefly developed Vaughn's connections with Security Currency.

On cross-examination, the government first developed the circumstances of the sale of the businesses. Then counsel launched into the challenged portion of the cross-examination. He asked specific questions about transfers of funds between the two companies by Suhl or by Wierman at Suhl's direction. The questions included dates and amounts, and were frequently prefaced by "Is it not a fact. . . ." Suhl initially denied such transfers, but became increasingly evasive. Counsel then asked whether Security was bankrupt. Suhl answered over objection that it was involved in Chapter XI proceedings. He also testified over objection that the matter of his indebtedness to Security was being litigated.

The government then had marked for identification Exhibit 55. It is the findings of the referee in the bankruptcy proceedings referred to earlier. See *Suhl v.*

Bumb, supra. Suhl was asked, over objection, several specific questions about his indebtedness to Security Currency and about transfers of funds. He either did not know the answer or denied any transfers. He was handed Exhibit 55 and asked whether it would change or modify any of his answers. His response was somewhat evasive. He was then questioned about the terms of the sale of the two companies. He indicated that he did not know much about the details of the sale.

Wierman next took the stand. The money order companies were first mentioned on direct. The substance of her testimony is that she had dual signature checks for use in the transfer of funds. On cross-examination, when counsel reached the matter of transfers of funds between the two companies, the following colloquy took place:

> "Mr. Lally: [Counsel for Wierman] Your Honor, I'm going to object to this as being beyond the scope. It wasn't touched on in direct. . . .
>
> The Court: Well, I guess we're going to have to go back and have that question.
>
> . . . .
>
> Mr. Lally: In the interst of saving time, your Honor, I'll withdraw the objection. He can explore it for a day if he wants to.
>
> . . . .
>
> Mr. Lally: And I withdraw my objection, your Honor."

Government counsel then proceeded to question Wierman about her knowledge of transfers between the two companies. She professed ignorance of such a practice. Transcripts of the record in the then pending bankruptcy proceedings were shown her and read by

counsel. Wierman admitted answering under oath the question there asked. Her answers indicated that she was in fact aware of the transfers. The questions exposed the jury to an account of how the transfers took place. On redirect, she explained the mechanics of the money order accounts and denied any improper transfers. On recross, the government brought out the fact that Wierman maintained an account at the Frontier Bank under the fictitious name of A. N. Dunning and that money order company funds had at one time been transferred to that account, but later retransferred.

The court finally limited the evidence to count six, as against both Suhl and Wierman.

We find no error. As to Wierman, the objection was waived. As to both appellants, the examination was proper in any event. They brought before the jury their interest in the two companies in an endeavor to show that they did not have the requisite criminal intent. It was then open to the government to show that, as to these two companies, their behavior was not above reproach, but involved juggling of funds and bank accounts. As we said in *D'Aquino v. United States,* 9 Cir., 1951, 192 F.2d 338, *cert. denied,* 343 U.S. 935:

> "We think that appellant's contention is based upon a misunderstanding of the proper scope of cross-examination. 'Appellant had given testimony in her direct examination designed to show both directly and circumstantially her good intent. . . . Thus the whole question of appellant's intention was open to inquiry upon cross-examination and the cross-examiner was entitled to bring up for examination any matter which rightly had a bearing on intent."

Shul's defense was based upon his lack of fraudulent intent and the lack of any motive for engaging in a scheme to defraud. An important basis for this defense was Suhl's claimed status as a successful businessman, who was merely caught in a temporary financial bind and who expected to have ample funds from the impending sale of his businesses. Wierman's defense was lack of knowledge of the charged acts. Her defense posture was that of aloof innocence.

The fact that both defendants were allegedly deeply implicated in improper transfers of funds between the money order companies and between the companies and their personal accounts is highly probative of the truthfulness of their defenses. The government was properly allowed to attempt to elicit on cross-examination evidence that Suhl and Wierman were, at the very times in issue, financial manipulators whose practices bordered on illegality, using accounts in their Frontier Bank. Such cross-examination and the inferences that might be drawn therefrom was also highly relevant to establish a motive—impending financial disaster—for the charged conspiracy. See *United States v. Ross,* 2 Cir., 1963, 321 F.2d 61, *cert. denied,* 375 U.S. 894; *United States v. Houlihan,* 2 Cir., 1964, 332 F.2d 8, *cert. denied,* 379 U.S. 828; *United States v. Feldman,* 2 Cir., 1943, 136 F.2d 394, *aff'd,* 302 U.S. 487.

The evidence being admissible, the fact that it showed that appellants may have committed other crimes does not require its exclusion. See, *e.g., Reed v. United States,* 9 Cir., 1966, 364 F.2d 630; McCormick, Evidence, § 157, Wigmore, Evidence, §§ 216-17. As for the claim that exposing the jury to the official nature of the document, Exhibit 55, was highly prejudicial, the

government correctly points out that the record is silent on the matter. We also note that all objections with regard to the use of Exhibit 55 were based upon the incompetence of the testimony sought to be elicited, not upon the exposure of the jury to the official nature of the document.

5. *Did the trial court err in admitting and later striking certain testimony of Tom Luther?*

The answer is no. Luther, an employee of the Frontier Bank during the time in question, testified that he had heard one of the clerks use the expression "check kite" during October, 1963. There was no objection. Later, objection was made, and the court struck the testimony and instructed the jury to disregard it. We presume that the jury followed the instruction. See *Santoro v. United States,* 9 Cir., 1967, ... F. 2d ....., (decided December 27, 1967).

6. *Is the verdict supported by the evidence?*

As we have already indicated, the answer is yes.

7. *Did the court err in refusing to give certain instructions?*

Our answer is no.

Appellants challenge the trial court's instruction on reasonable doubt. That instruction was as follows:

> "If in this case, after you have considered the evidence, you have such a doubt in mind as would cause you or any other prudent man or woman to hesitate in some matter of grave concern in your own lives, then you have such doubt as the law contemplates as a reasonable doubt."

We note that appellants' offered instruction on reasonable doubt contains a sentence to the same general effect. Moreover, such an instruction was recommended by the Supreme Court in *Holland v. United States*, 1954, 348 U.S. 121, 140.

Appellants also argue that the trial court erred in refusing to give several requested instructions. The essence of each requested instruction is contained in the instructions as given.

Affirmed.

APPENDIX NO. 2.

Testimony of Margaret Wierman.

R. Tr. p. 1082, line 4:

"Q All right. Now, in connection with the matters that are before the Court, I first wanted to call your attention to an exhibit—

May I approach, your Honor?

THE COURT: You may.

MR. LALLY: Q —Sw, which is a check dated 9/20/63 that is in the amount of $46,711, and call your attention to the signature on that check that Mr. Goodwin testified you signed. Did you sign that check?

"A No, sir, I did not.

"Q Had you ever seen that check until this case came up?

"A. No, sir, I have not.

"Q Were you present in the bank and have any discussion with Mr. Goodwin about this check?

"A No, sir, I did not." [R. Tr. p. 1082 lines 4-18].

R. Tr. p. 1094, line 22:

"MR. LALLY: Q Now, calling your attention, Mrs. Wierman, to the date 11/22/1963, which previously was mentioned as the day of President Kennedy's assassination, do you recall where you were on that particular day?

"A Yes, sir.

"Q And where were you on that day?

"A I was at the residence of Mr. and Mrs. William Richards in Monterey Park.

"Q And is that in Los Angeles County?

"A Yes, it's a suburb.

"Q Have you further with your records been able to verify your being there?

"A Yes, sir.

MR. LALLY: May these be marked as the next Exhibit in order, your Honor, for identification?

THE COURT: These two documents, the Standard Oil or Chevron gasoline tag, and a long distance telephone statement, may be marked Defendant's Exhibit BA*w* 1 and 2, for identification.

(Documents referred to above were received and marked Defendant's Exhibit BA*w* 1 and 2 for identification.)

MR. LALLY: May I approach, your Honor,

THE COURT: You may.

MR. LALLY: Q Mrs. Wierman, I call your attention now to BA*w* for indentification. Can you tell me what the first is?

"A This is a Chevron gasoline card or Standard that I signed. It doesn't show the license plate, but it was an automobile.

"Q What is the date on it?

"A The date on it is 11/22.

"Q All right. And the next document?

"A Is the telephone—it's a leaf from the telephone bill that gives the listing of credit cards also, and it shows the call to Covelo from Los Angeles using the credit card.

"Q On the 22nd?

"A Yes, sir.

"Q All right.

MR. UTLEY: What year is that?

MR. LALLY: Q 1963?

"A Yes, sir.

"Q And this is from the billing you received from the telephone company?

"A Yes, sir.

"Q All right. Now, do these refresh your memory also as to events on that day?

"A Yes, sir.

"Q All right. Now, on that day of the President's assassination, where were you during the day, as you recall it?

"A During the greater part of the morning I was at the residence viewing the events of the assassination on T-V; as a matter of fact, for the greater part of the day. I did go out during the day but—well, not for a very long time.

"Q All right. Now, then, these are items, the phone call and the gas ticket, which also assist in placing you there?

"A Yes, sir.

MR. LALLY: All right. We'd offer these next in order, your Honor.

MR. MASON: Object to BA*w* as incompetent.

MR. UTLEY: We join in the offer.

THE COURT: Be marked for identification only at this time." [R. Tr. p. 1094, line 22, to p. 1097, line 5].

R. Tr. p. 1099, line 22:

"Q All right. Now, on December the 2nd was the second meeting that Mr. Johnson spoke of. What refreshes your recollection as to that particular date?

"A That day was the day that we were to sign the final papers of the agreement setting forth the agreement for the sale of the two money order companies. We all convened at the time that was appointed. How-

ever, further detail came up, came to light, that it was necessary to resolve problems concerning the equipment, and so on. Therefore, some of the papers were signed partially, but it related to the equipment and the settlement of where it was to be and when it was to be moved, and we adjourned to complete them for the next day.

"Q All right. What portion of the day did you spend then working on this project on December 2nd of 1963?

"A All the afternoon in Mr. Johnson's office.

"Q All right. Were you in Covelo on any part of that day?

"A No, sir, not at all.

"Q You hadn't been for several days before?

"A No, sir.

"Q Now, on December 3rd I believe Mr. Johnson testified you continued and closed the deal there?

"A Yes, that's right.

"Q And you attended that?

"A Yes, sir.

"Q Then on December the 4th where were you?

"A I was still in that Los Angeles area. We entered into negotiations on another transaction.

"Q All right. Were you in Covelo on December the 4th?

"A No, sir.

"Q Incidentally, on December the 2nd, two days before, did you sign a check as Mr. Gibson testified here?

"A No, sir.

MR. MacDOWELL: Who did you say, Mr. Lally?

MR. LALLY: Pardon me, Mr. Goodwin; I get those names mixed up, I'm sorry; Mr. Goodwin.

"A No, sir.

THE COURT: Are you going to start something else, Mr. Lally?

MR. LALLY: I was going to finish that date. I won't lose the continuity. It's all right.

THE COURT: It's time for the morning recess. All right. We'll take the morning recess at this time. Ladies and gentlemen of the jury, you'll remember the admonition of the Court heretofore given.

(Recess.)

THE COURT: Jurors are all present. You may proceed, Mr. Lally.

MR. LALLY: May this be marked, your Honor, as the defendant's next for identification?

THE COURT: This photocopy of this gasoline Standard Oil or Chevron gasoline tag may be marked Defendant's Exhibit BB*w* for identification.

(Document referred to above was received and marked Defendant's Exhibit BB*w* for identification.)

MR. LALLY: Can I approach, your Honor?

THE COURT: You may.

MR. LALLY: Q Showing you now, Mrs. Wierman BB*w*, which pertains to 12/4/63 that we've been discussing, can you tell us what that is?

"A That is a Chevron or Standard gasoline credit card ticket issued for the privilege of the bank, dated December 4th, showing the purchase of gasoline in Los Angeles.

"Q It's your signature then?

"A Yes, sir.

MR. MASON: Pardon me, I missed on phrase: for the privilege of the bank?

MR. LALLY: Yes, sir. It's a bank credit card.

"Q Your signature?

"A Yes, sir.

"Q All right. Now, on December the 4th, which would be the day following these papers that you signed in connection with the money order sale—

"A Yes, sir.

"Q. —does this refresh your recollection also as to where you were?

"A I was in Los Angeles on that day.

"Q Were you in the Covelo Bank on any portion of that day?

"A No, sir.

MR. LALLY: Offer it next, your Honor, in evidence.

MR. MASON: No objection.

THE COURT: You wish to join in this?

MR. UTLEY: No questions.

THE COURT: No. Do you wish to join in this? There's no objection by the Government.

MR. UTLEY: All right; yes, we wish to join, as to all these exhibits that go in, our exhibits also.

MR. MacDOWELL: We join, your Honor.

THE COURT: All right. Let this exhibit be marked Exhibit BB in evidence. It was heretofore marked BB*w*. for identification.

(Document referred to above, previously marked Defendant's BB*w* for identification, as marked Defendants' Exhibit BB in evidence.)

MR. LALLY: I would like to approach, your Honor.

THE COURT: You may.

Q Mrs. Wierman, I would show you next Defendant's Exhibit I, which has been identified as a check dated December the 2nd, 1963?

"A Yes, sir.

"Q And has the signature "B. L. Suhl" which Mr. Goodwin stated he saw you sign, and the handwriting man said was in Mr. Suhl's—

MR. MASON: Objection, your Honor; argumentative. He can ask a question, but there's no point in reviewing all the evidence.

MR. LALLY: Just trying to identify it.

THE COURT: Well, identify it, but don't recap the evidence by way of identification.

MR. LALLY: Q Did you sign that check as Mr. Goodwin said?

"A No, sir.

"Q All right. Is that the legitimate signature of your son—

"A It appears to me to be. I won't say that it was.

"Q —as was heretofore testified?

"A Yes, sir.

"Q Now, you were not in Covelo on that date?

"A No, sir.

"Q And you did not sign this as Mr. Goodwin stated?

"A No, sir.

"Q Calling your attention next to Exhibit J, dated December 4th, 1963, a check to Mr. R. Gibson which Mr. Goodwin stated you signed—

MR. MASON: Objection; counsel knows better than this.

MR. LALLY: Now, your Honor, I can ask her if she did something that this person accused her of.

THE COURT: Well, now, Mr. Lally, that isn't a fact. You don't restate the evidence every time you identify an exhibit.

Now, Mr. Mason, I'd ask that you not make a comment that you made either. Now, this thing is identified, and you can ask her questions about it. This is on direct examination.

MR. LALLY: Your Honor, I have a right to ask her if she did a thing a person accused her of.

THE COURT: You don't need to repeat the evidence in that. Ask her if she signed that check, and that's sufficient.

MR. LALLY: Well, your Honor, I would take exception then to the ruling, so that the record is clear.

THE COURT: Mr. Lally, we went over this yesterday. Now, that's just a gimmick, that taking exception. You don't need to do it in this Court. Your exception is granted without taking action.

MR. LALLY: Your Honor, pardon me then.

"Q Mrs. Wierman, calling your attention to this check dated December 4th, 1963, which is the Defendant's Exhibit J, which has been the subject of testimony heretofore, did you sign that check as was previously testified?

"A No, sir, I did not.

THE COURT: Mr. Lally, you're doing again what I told you not to do. All you need to do, did she or didn't she sign this check.

MR. LALLY: Q Did you sign this check?

"A No, sir, I did not.

"Q All right. Does it bear the legitimate signature of your son B. L. Suhl?

"A Yes." [R. Tr. p. 1099, line 22, to p. 1105, line 24].

R. Tr. p. 1117, line 15:

MR. LALLY: Q On the day following the New Year's of 1964, have you been able to find anything,

or do you have any recollection on the day, where you were on the day following New Year's.

"A I was in Covelo.

"Q All right. Were you in Covelo on that day?

"A Yes, sir.

"Q Now, on that day did you give Mr. Goodwin any checks signed by your son or you or him or anybody else?

"A I never gave Mr. Goodwin any checks.

"Q All right. On the 6th of January following New Year's there, where were you, if you recall:

"A I was in Covelo the greatest part of January. I'm sure I was in Covelo on the 6th.

"Q All right. Did you on that occasion give Mr. Goodwin any checks signed by you, him, your son or anybody else?

"A No, sir." [R. Tr. p. 1117, line 15, to p. 1118, line 6].

R. Tr. p. 1122, line 16, to p. 1135, line 1:

"Q Mrs. Wierman, calling your attention to mid-September of 1963, particularly the dates of September 18th, 19th and 20th, have you from your search of your records and papers been able to refresh your memory as to events as they concerned yourself on those days?

"A Yes, sir.

"Q And on September the 18th do you recall now where you were?

"A Yes, sir.

"Q All right. And on that date where were you, as you recall it?

"A In Covelo, working at the bank.

"Q All right. And was there any meeting of the board on that day?

"A Yes, sir, it was a regular meeting.

"Q On the 18th of September?

"A Yes, sir.

"Q And did you attend that board meeting?

"A Yes, sir.

"Q All right. And was there a manner in which you were paid for attending these board meetings?

"A Yes, sir.

"Q How was it done?

"A. Usually the bookkeeper issued the checks quarterly, and usually the check, the deposits followed the meeting of every third month.

"Q Were you paid if you did not attend the meeting?

"A No, sir.

MR. LALLY: Mark this, your Honor, as next for identification?

THE COURT: Be marked Defendant's Exhibit BI*w* for identification.

(Document referred to above was received and marked Defendant's Exhibit BL*w* for identification.)

MR. LALLY: May I approach, your Honor?

THE COURT: You may.

MR. LALLY: Q Mrs. Wierman, calling your attention to BI*w* for identification, can you tell me what this is?

"A This is the duplicate deposit slip indicating the cashier's check No. 8257 for $150 was deposited in my account on September 19th, 1963.

"Q Now, there's a notation at the bottom that says, 'Director's Fees, July, August, September.' I think you wrote that yourself?

"A Yes, sir.

"Q And that's since you got the deposit slip back? It wasn't originally on it?

"A I think I wrote it on at the time.

"Q At the time?

"A Yes, sir.

"Q Now, what did this $150 deposit represent?

"A Fifty dollars for each meeting, for three meetings.

"Q For July, August and September of 1963?

"A Yes, sir.

"Q And it was deposited then on September the 19th of 1963?

"A Yes, sir.

MR. LALLY: We offer it next, your Honor.

MR. MASON: Objection; incompetent for this purpose.

THE COURT: Be marked Defendant's Exhibit BI*w* for identification at this time.

MR. LALLY: Q Now, on the 20th—or pardon me—on the 19th, did you have occasion as you remember it to see the doctor?

"A Yes, I did.

MR. LALLY: Now, excuse me just a minute, your Honor.

We'd ask this to be marked next, your Honor.

THE COURT: Defendant's Exhibit BJ*w* for identification; two sheets to be marked as a single exhibit; doctor's statement.

(Document referred to above was received and marked Defendant's Exhibit BJ*w* for identification.)

MR. LALLY: May I approach, your Honor?

THE COURT: You may.

MR. LALLY: Q Showing you BJw, Mrs. Wierman, which has at its head Fred W. *Cooksley,* M.D., does it contain an entry for September the 19th, 1963?

"A Yes, sir, it does.

"Q For services rendered to yourself?

"A Yes, sir.

"Q All right. Does this refresh your recollection as to events on the 19th of September, 1963?

"A Yes, sir.

"Q And what happened so far as this doctor is concerned?

"A I worked in the bank, and had gone to the doctor after banking hours.

"Q On that particular day?

"A Yes, sir.

"Q So on the 18th or 19th you were in Covelo?

"A Yes, sir.

"Q All right. Were you also in Covelo on the 20th of September, 1963?

"A The 20th? I'd have to refer to my documentation.

"Q Well, the point is, have you been able to locate anything that would identify the 20th?

"A Oh, yes, sir.

"Q I don't have any. Is there something I don't have on the 20th?

"A Well, I'm sorry if it's not in there. I was remiss in not handing it to you.

"Q Is there anything in particular you recall on the 20th that fixes your location?

"A I'm thinking of a check. I guess it's the next day.

"Q You're thinking of the 21st?

"A Yes, I'm thinking of the 21st.

"Q There's nothing that we're able to locate for the 20th?

"A No, not the 20th.

MR. LALLY: May I, your Honor?

THE COURT: You may. (Document shown to counsel)

MR. LALLY: Mark it for identification, your Honor?

THE COURT: Be marked Defendant's Exhibit BK*w* for identification; a check.

[Document referred to above was received and marked Defendant's Exhibit BK*w* for identification.]

MR. LALLY: Your Honor, I would offer BJ*w* in evidence, the doctor's statement.

MR. MASON: Objection as incompetent.

THE COURT: Let it be marked for identification only.

MR. LALLY: May I approach, your Honor?

THE COURT: You may.

MR. LALLY: Q Now, calling your attention to BK*w*, would you tell us what this is?

A It is a check dated September 21st, made to the order of S.D.A., which is the Seventh Day Adventist Church, for five dollars, and it was a check that I used to put in the offering plate for that day.

"Q All right. Now, that would be a Saturday then?

"A Yes.

"Q Fine. Well, we've spoken of the 18th, 19th and 20th. You didn't find anything—this is the 21st?

"A Yes, sir.

"Q Does this refresh your mind now as to whether on the 18th, 19, 20th and 21st you were in Covelo during all of that time?

"A Yes, sir.

"Q All right. You were not absent then for the 18th, 19th and 20th?

"A No.

MR. LALLY: Thank you. Offer this next, your Honor.

MR. MASON: Objection as incompetent.

THE COURT: Let it remain marked Defendant's Exhibit BK*w* for identification.

MR. LALLY: I believe I asked you about S*w*, but to be sure I'll just take a moment. May I approach, your Honor?

THE COURT: You may.

MR. LALLY: Q Calling your attention to S*w*, which is dated 9/20, did you sign the name 'B. L. Suhl' to that check?

"A No, sir, I did not.

MR. LALLY: Just one second, your Honor. I'll try to put it in order. I think it will expedite it.

May I approach?

THE COURT: You may.

MR. LALLY: Q Now, Mrs. Wierman, calling your attention to Exhibit K, which is dated 12/13/63, did you ever see that check at any time before the trial here on the events leading up to it.

"A No, sir.

"Q Particularly before January of '64 at any time?

"A I've never seen it before.

"Q And did you sign this?

"A No, sir.

"Q Did you have occasion to discuss it in any manner with Goodwin?

"A No.

"Q All right. Now, calling your attention to check which is Exhibit L, dated 12/20/63, did you sign that one?

"A No, sir, I did not.

"Q Did you have any occasion to see it at any time before the end of January in '64—

"A No, sir.

"Q —or before the trial here?

"A No, sir.

"Q All right. Did you ever discuss it with Mr. Goodwin?

"A No, sir.

"Q Now, Exhibit M, which is dated 12/23/63, if I'd ask you the same questions with reference to it, in the interest of saving time, would your answers be the same?

"A I have not seen this check before.

"Q And as to Exhibit N, which is dated 12/31/63, I ask the same question.

"A I've not seen it or discussed it with anyone.

"Q All right. Now, I believe—here's a check that is dated 11/8/63, which is Exhibit F.

MR. MASON: F?

MR. LALLY: Yes.

"Q Did you sign this check?

"A No, sir, I did not.

"Q Have you ever seen it before?

"A No, sir, I did not.

"Q Have any occasion to discuss it with Mr. Goodwin?

"A No, sir.

"Q Ever give it to him?

"A I should say not.

MR. MacDOWELL: What was that, S or F?

MR. LALLY: The last one?

MR. MacDOWELL: Yes.

MR. LALLY: F.

"Q The next one is Exhibit A, dated 11/5/63, and I would ask you the same question with reference to it.

"A No, sir, I haven't seen it or discussed it with anyone.

"Q And Exhibit B, which is dated 11/14/63; same question.

"A Same answer. I have not seen it or discussed it with anyone.

"Q The next one is dated November 18th, 1963, same question.

"A I have not seen it or discussed it with anyone.

MR. UTLEY: What's the Exhibit number?

MR. LALLY: Exhibit number is C.

"Q Next Exhibit number D, which is dated 11/22/63, same question—let's see, Exhibit D? Yes.

"A I may have discussed this with someone. I didn't see it.

"Q This is the day of the assassination?

"A Yes, sir.

"Q All right. This was the one then. We'll put it aside for a moment.

Now, 11/29/63, which is Exhibit E, I would ask you the same question.

"A Well, sir, I don't really know which—

MR. MASON: Can we correct that for the record? I believe that's the 27th, Mr. Lally.

THE COURT: The 27th.

MR. LALLY: You're correct, Judge. It's the same one—I kept reading the 29th. It's the same one we removed from the bank records.

MR. UTLEY: What's the exhibit number?

MR. LALLY: The exhibit number on it is E.

"A I don't know which check it was that was discussed, but it was about this time that I did discuss one of these checks.

"Q All right. Did you discuss it with Goodwin?

"A Yes, I did.

"Q But it was one of these two?

"A Yes, sir.

"Q All right. Now, with whom did you have the discussion that you just referred to?

"A The first discussion?

"Q Yes.

"A The first discussion came about with Mr. Vaughn.

"Q All right. And where did this discussion take place?

"A At the residence of the Richards.

"Q And on what date, as you recall it?

"A This was the morning of the assassination.

"Q And did that discussion pertain to this check that was dated on that day?

"A I didn't see—he didn't bring the check with him. We merely discussed a check. He didn't say what the date was or the amount, as I recall.

"Q All right. Had you ever seen a check at any time?

"A No, I've never seen the check.

"Q Now, on the occasion of that discussion, was it following that that you called your son?

"A Yes, I did.

"Q All right. Did you have occasion thereafter to discuss it at any time with Mr. Vaughn?

"A No, I did not.

"Q Did you have occasion after that date, until after the month of January '64, to discuss it any further than you did on that particular day with your son?

"A No, no, I didn't.

"Q All right. Now, on that particular day did you have occasion to discuss, the day of the assassination, the matter of Mr. Vaughn's check with Mr. Goodwin?

"A Yes, I did.

"Q And what conversation did you have with Goodwin on that occasion?

"A I was very unhappy about the check in the first place; and secondly—

MR. MASON: Objection; not responsive.

MR. LALLY: Q What conversation did you have with Mr. Goodwin?

"A I asked Mr. Goodwin why he would okay a check of that nature without discussing it with me.

"Q And what did he tell you?

"A He said that he had worked it out with Mr. Suhl and that—I don't recall any more than that; I really—I was very upset about it, and I don't recall. I was doing most of the talking, and the assassination was going on also, and I just don't recall what he said.

"Q Now, did you thereafter discuss it further with Mr. Goodwin at any time?

"A No, I didn't.

"Q Or any of the other checks that were involved?

"A No, I didn't.

"Q Now, did you at any time have in your desk drawer checks on your son's account as contrasted to the money order accounts at the Manchester and Vermont Branch Bank of America in Los Angeles?

"A Did I have what kind of checks?

"Q Any checks that would be printed checks on your son's account as contrasted to the money order company accounts?

"A No, I didn't.

"Q All right. You would have had some, I take it, from the money order company?

"A Yes, sir.

"Q And the ones from the money order company, whose facsimile signatures would be on these?

"A Mr. Suhl's and Mr. Vaughn's.

"Q All right. Would these be printed checks?

"A Yes, sir.

"Q And did you habitually keep these?

"A Yes, sir.

"Q In connection with the work of the transfer of the funds?

"A That's correct.

"Q All right. But you never had any on your son's account?

"A Never did.

"Q Now, did you have any at any time, any of these so-called Universal checks on your—signed by your son at any time?

"A No, sir." [R. Tr. p. 1122, line 16, to p. 1135, line 2].

Testimony of Sherwood Morrill, Handwriting Expert.

R. Tr. p. 868, line 23:

"Q Mr. Morrill, would you state your name for the record, please?

"A Sherwood Morrill.

"Q And what is your work or occupation, sir?

"A I am an examiner of questioned documents.

"Q And by whom are you currently employed?

"A The California State Bureau of Criminal Identification.

"Q And how long have you been employed by that agency?

"A A little over 31 years.

"Q Has that been your work with that agency during this time?

"A Yes, sir.

"Q Can you tell me, please, to begin with, the educational qualifications you had to fit you for this work?

"A I studied under another man, Mr. Charles H. Stone, for five years. I have read and studied, I am sure, most of the text books on this subject. I have done some writing on the subject for Peace Officer consumption. I have lectured on this particular subject at Sacramento State and University of California.

"Q Now, during the years can you give us some idea of the number of times you have testified in Courts of this State and in the Federal Court?

"A It is in excess of 3000 times, now, Mr. Lally.

"Q Have you testified on behalf of both the prosecution and the defense so far as criminal matters are concerned?

"A Yes, sir.

"Q And have you been called upon for testimony in the Courts of the State and in the Federal Courts on Civil matters?

"A Yes, sir.

"Q At my request did you make certain examinations of documents in this case?

"A I did.

MR. LALLY: Your Honor, if there are any questions on Mr. Sherwood Morrill's qualifications in this field I would bow to them at this time.

MR. MASON: No questions from the Government.

MR. LALLY: May I approach the witness, your Honor?

THE COURT: You may.

MR. LALLY: Q Calling your attention first, Mr. Morrill, to a check that has been marked here as Exhibit I—

This, your Honor, I might state for the purpose of identifying it, is a check dated December 2, 1963, that the testimony of Mr. Goodwin stated—

MR. MASON: Objection, your Honor.

THE COURT: Wait a minute. Just identify the check.

MR. LALLY: Very well.

"Q Calling your attention solely to the signature portion of this document to begin with, also now calling your attention to Defendants' Exhibit D, which purports to be a check dated December 4, 1963, and to the signature portion of this document.

MR. MASON: Is that "D", Mr. Lally?

MR. LALLY: Pardon me, Exhibit J,—I and J.

"Q You have had an opportunity to examine these, have you not, Mr. Morrow?

"A I have, yes.

"Q Now, calling your attention also to other exhibits that have been marked, to begin with Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit K, Exhibit L, Exhibit M and Exhibit N, have you had an opportunty also to examine those, sir:

"A I have, yes.

MR. LALLY: Could I ask, your Honor, that these two sheets be marked for identification?

THE COURT: Yes. They will be AR-W and AS-W for identification.

[Documents referred to marked defendants' Exhibits AR-W and AS-W for identification.]

MR. LALLY: May I approach again, your Honor?

THE COURT: You may.

MR. LALLY: Q Now calling your attention again to the Exhibits that have just been marked, AR-W, this also you compared, did you not?

"A Yes, I did.

"Q And to AS-W, this also you have taken into consideration?

"A I certainly have.

"Q Now for the purposes of identification this was written in your presence by Mrs. Wierman?

"A It was, yes.

"Q Now I am particularly interested, Mr. Morrill, in Exhibits I and J, and to the handwritten signature contained on the checks constituting each of these exhibits. Having in mind the checks A, B, C, D, E, K, L, M. N, can you tell me, please, what your opinion as to whether or not that group of checks are signed by the same person?

"A Yes, Mr. Lally. In my opinion the B. L. Suhl signature appearing in the lower right hand corner of each of those checks, Exhibits A, B, C, D, E, K, L, M and N are all by one person.

"Q Now did you have a chance to compare them with Exhibits AR-W?

"A I did.

"Q And can you tell me what your opinion is based upon that comparison?

"A Each of the signatures on the various checks you have just enumerated in my opinion are very definitely by the same person whose writing appears on AR-W.

"Q And this writing on AR-W was the present writing of Mr. Suhl, correct?

"A That is my understandnig, Mr. Lally.

"Q Now, in comparing all of these lettered exhibits, A, B, C, D, E, K, L, M, and N, and Exhibit AR-W, to the signature as it appears on Exhibit I, what conclusion did you come to, Mr. Morrill?

"A The B. L. Suhl signature on Exhibit I is also by the same person, in my opinion.

"Q And comparing it to the signature on Exhibit J what conclusion did you come to?

"A The B. L. Suhl signature on Exhibit J is also by the same person, in my opinion.

"Q In other words, all of these lettered checks and AR-W as well as I and J bear the same signature by the same person?

"A In my opinion they certainly do.

"Q Now the other exhibits, AS-W, which we identified as being written in your presence by Mrs. Wierman, did you have her write in her own handwriting her name?

"A I did.

"Q And did you have her write also the name of her son, B. L. Suhl, in her handwriting?

"A I did.

"Q Did you have her attempt to simulate her son's handwriting?

"A I did.

"Q And having that information did you compare it to the documents that are before you?

"A I did.

"Q Did she, in your opinion write the signature 'B. L. Suhl' as it is on I and J?

"A In my opinion she certainly did not." [R. Tr. p. 868, line 23, to p. 875, line 4].

Testimony of B. L. Suhl.

R. Tr. p. 861, line 5:

"MR. UTLEY: Q Did you discuss these matters with Mr. Goodwin, the matter of the checks?

"A I did.

"Q And where did you discuss that with him?

"A On two or three occasions at the bank.

"Q Anyone present other than you and he?

"A No, sir.

"Q What did you say to him and what did he say to you?

"A On the first transaction—

"Q That is the $46,700 check?

"A Yes, sir. I called him on the phone and told him there was a check coming through on Ron's account and I expected money from the east, and that it had not come in and that he should draw a draft against my Bank of America account, which he did.

"Q And that draft was paid, I think you said?

"A Yes, sir.

"Q Now did you later discuss the matter with him further?

"A I did.

"Q When and where?

"A In San Francisco in October.

"Q Where was that conversation held?

"A First it was held in the lobby of the Mark Hopkins and the balance—actually he came to my room

first and that is when I gave him the check and then I walked downstairs with him because there were some other people present and I didn't want them to hear what was said.

"Q What did you say to him and what did he say to you?

"A I told him that I was in a terrible bind, that I had gotten a tiger by the tail in the Royal Properties, and I couldn't let go and that they were going to wipe me out, that I was about to be wiped out in this Royal Properties situation unless I had other money coming in, which I was working on desperately, and that there might be a check come in and if it did I wanted him to handle it the same as he had the one before.

"Q Did you discuss anything with him relating to whether or not your mother should know about this?

"A Yes, I did.

"Q What did you say to him in that regard?

"A I told him that I didn't want it discussed with my mother at all.

"Q Did you tell him why?

"A Yes, I did.

"Q What did you tell him?

"A That my mother is very opposed to the stock market and that I didn't want her to know that I am gambling in the market.

"Q Now when after that, if at all, did your mother ever discuss the matter with you?

"A In late November, I believe it was on the day that the President was assassinated, but it could have been a few days after, maybe a week later.

"Q And where were you when she discussed it with you?

"A I believe I was at the Elks Club.

"Q Was this a telephone conversation?

"A It was.

"Q Do you know where your mother was?

"A She was at some people's house where she was staying, I think. I really don't know for sure.

"Q Was she in Los Angeles—

"A Yes.

"Q —or in Covelo, or—

"A She was in Los Angeles.

"Q And what did she say to you and what did you say to her?

"A She called me and said that Mr. Vaughn had told her that I had asked him to issue a check against his account in Covelo, and she wanted to know if it was true, and if so, why.

"Q And what did you tell her?

"A I told her that I had gotten in a jam with Royal Properties, the brokerage houses were threatening to sell me out, and that I was in a short term bind, that I would have it taken care of the next day or the following day, that I had money coming in and she shouldn't worry about it at all, that I definitely had it taken care of.

"Q What further did she say?

"A Well, she was very unhappy about it because of the stock situation. I had lost some ten or twelve thousand dollars once before in the stock market and she was definitely against it. Her comment was, "Why don't you stick to what you know instead of trying to play someone else's game?"

"Q Did she say what she was doing, particularly with respect to her position in the bank?

"A It seems that—she said she wasn't going to get into another situation where Ronnie Vaughn would be

carrying an account at the Frontier Bank which was in reality my own account, and she wouldn't be a part of it. That the Banking Department had asked her to close my account, and that if I was going to have Ronnie write checks it might as well be my account there and she would resign. As a matter of fact, she said that unless it stopped, that I wouldn't have Ronnie write any more checks, that she wouldn't go back to the bank at all.

"Q Now, what did you tell her in regard to that?

"A I told her that I had money coming in and I was sure that would be the end of it, wouldn't be any more.

"Q And did you have money coming in?

"A I did, but it didn't come in as I expected."

[R. Tr. p. 861, line 5, to p. 865, line 2].

APPENDIX NO. 3.

Excerpts From Robert Goodwin's Testimony.

R. Tr. p. 209, line 2:

"Q During the period of time when the sizeable Vaughn checks came in let's pin that period of time down, if you can: Do you recall about when the first one came in?

"A It would be in September of 1963.

"Q When was the last one you recall?

"A In January of 1964.

"Q All right, let's restrict our attention to that roughly four months period. You have estimated probably in excess of two dozen such checks?

"A Yes, sir.

"Q Do you independently recall the particular date of any one of these checks right now?

"A There was one—I believe the first one happened on the 30th of September, 1963—I am not positive, no.

"Q What I am getting at is you don't specifically recall an exact date of anyone right now?

"A No.

"Q Was essentially the same pattern followed in banking operations concerning that check each time one of these came in?

"A That is correct.

"Q Can you tell us, sir, in your own words what happened, start with a typical day that one of these Vaughn checks came in and tell us what who did.

"A The check came in in the incoming cash letter from the Federal Reserve Bank of San Francisco.

"Q Will you tell us what the incoming cash letter is?

"A The incoming cash letter is the checks that come in that are drawn against a given bank from the Federal Reserve to be paid against individual accounts. This cash letter would then come in to the Frontier Bank, we would balance it and see if it agreed with the amount with which we were charged. If the Vaughn check was in the work it would be pulled out, a slip of paper put in its place, and I would be notified of the amount of the check so that the check drawn against the account of B. L. Suhl could be deposited to the account of R. B. Vaughn. The R. B. Vaughn check would then be held over in the Rejected Check Register for a day so that the credit to the R. B. Vaughn account in the same amount as the check would reach the account at the same time the check did.

Then the check of Suhl's would be sent out in the outgoing cash letter. These are checks that are drawn on other banks other than the Frontier Bank. They would go out for collection to be paid against the account against which they were drawn in other banks. The check would then go out in our outgoing cash letter.

BY MR. MASON:

"Q Do I understand, Mr. Goodwin, the same day that a Vaughn check came in a Suhl check was prepared in the same amount?

"A That is correct.

"Q Who prepared the Suhl check?

"A I did.

"Q On every occasion?

"A I would think so, yes.

"Q Where did you obtain a Suhl check or such preparation?

"A There were three places to obtain them, one was from Mrs. Wierman. In the beginning she supplied the check and the signature to the check.

"Q When you say 'supplied the signature to the check,' what do you mean by that?

"A She signed the signature of B.L. Suhl to the check.

"Q She, herself, signed—

"A That is correct.

"Q —the signature. On one or more than one occasion?

"A On one or more than one occasion.

"Q Was there ever any occasion when she handed you a Suhl check which already had a signature on it?

"A That is correct.

"Q Was that one of the three possibilities?

"A That is the first.

"Q All right, the second possibility?

"A The second possibility was that the check which was already drawn against the account of B. L. Suhl signed by him, a personalized check, would be handed to me to fill in the date and the amount and the payee.

"Q Be handed to you by whom?

"A By Margaret Wierman. Or I would have some of these checks, there were occasions that I had some of these checks in my desk and I used those to credit the account of Mr. Vaughn.

"Q You say there was occasions when you had some of those checks in your desk. By those checks, what do you mean?

"A The pre-signed checks by B. L. Suhl.

"Q A pre-signed check, a check already signed by Suhl, but the other writing not filled in?

"A That is correct.

"Q During the period of time you had such checks in your desk drawer where did you get them?

"A From Margaret Wierman. She mailed them to me from Los Angeles.

"Q Those three possible situations, do they account for all of the Suhl checks prepared at the bank? In other words, did anybody other than you and Margaret Wierman ever prepare a Suhl check on these occasions?

"A No. There was another, I would take a universal check, which is a check that does not have the bank filled in, I would fill in the name of the bank, the date and the amount and supply the signature of B. L. Suhl myself.

"Q On one or more occasions you yourself signed Suhl's signature?

"A I did.

"Q Now, on each of these three or four possible sources of Suhl checks did you have—did you cause the checks to be prepared pursuant to any instructions?

"A Pursuant to the instructions—

"Q No,—just yes or no for the moment.

"A Yes.

"Q Who gave you such instructions?

"A Margaret Wierman and B. L. Suhl.

"Q Can you tell us what you mean by two people giving you instructions? Were they given simultaneously?

MR. UTLEY: I didn't hear the question.

BY MR. MASON:

"Q Tell us about the instructions that you received from Wierman and Suhl in this regard.

MR. LALLY: Object to this as compound, Your Honor.

MR. MASON: Q First of all, let's take Wierman —Mrs. Wierman gave you such instructions?

"A That is correct.

"Q First can you give us the foundation, when, where, who was present?

"A In the beginning when the first check for Mr. Vaughn came in we did not have funds, so therefore, knowing it was payable to Mr. Suhl and having had the prior experiences with Mr. Suhl's—

MR. MacDOWELL: I object to the answer as not responsive to the question. The question was when, where and who were present during the conversation.

MR. MASON: Let's set that foundation first. It was early in the period you discussed?

"A That is correct.

"Q You don't recall the exact date?

"A In the latter part of September of 1963.

"Q Where?

"A At the Frontier Bank. A check came in drawn by Mr. Vaughn for a larger amount than he had on deposit—

MR. MacDOWELL: I object, your Honor.

MR. MASON: Just a moment, Mr. Goodwin, we have to develop this bit by bit. Was anyone present—was there a conversation between you and Mrs. Wierman?

"A That is correct.

"Q Was anyone else present besides the two of you?

"A No.

"Q Now what, to your personal knowledge, transpired that led up to this conversation?

"A A check for a large amount against the account of Mr. Vaughn came in to the bank—

"Q As a result of the receipt of that check did you approach Mrs. Wierman?

"A I did.

"Q Now tell us the conversation?

"A She then said she would contact Mr. Suhl, which she called him on the telephone in my presence, and then she produced a check, signed it and gave it to me to deposit in the account of R. B. Vaughn for this large check that had been drawn by him.

"Q Do you know if she then had a supply of pre-signed checks in her desk?

"A She did not.

MR. LALLY: Pardon me, your Honor, I didn't hear the answer.

THE COURT: 'She did not'.

BY MR. MASON:

"Q Will you tell us how much later than that occasion do you know that she had pre-signed checks in her possession?

"A I believe there was one more occasion that she had to draw a check, and then after that she had a supply." [R. Tr. p. 209, line 2, to p. 215, line 17].

R. Tr. p. 221, line 17:

"A The date is 10-28-63, in the amount of $67,500.

MR. UTLEY: What is the amount, please?

"A $67,500.

MR. LALLY: The date?

"A 10/28 of '63." [R. Tr. p. 221, lines 17-21].

R. Tr. p. 224, line 11:

"Q Did any of those Suhl checks the subject of these deposits bear the signature, bear countersigned a second signature of someone other than Suhl?

"A They did not.

"Q Did the Frontier Bank of Covelo ever receive any checks bearing the signature of Mr. Suhl and another person?

"A We did.

"Q Were any of those involved in the Vaughn personal account?

"A They were not.

"Q What was the general nature of such checks that would have borne two signatures?

"A The checks that bore two signatures were the signatures of B. L. Suhl and R. B. Vaughn, as officers of the Security Currency Services and the American Security Currency Services, both money order companies.

"Q You bank also had some transactions involving one or both of those accounts?

"A That is correct." [R. Tr. p. 224, line 11, to p. 225, line 4].

R. Tr. 236, line 18:

"Q Mr. Goodwin, I will show you what has been offered for identification by the Defendants as Exhibit I, a check dated 12-2-63. Would you examine that check, please? Tell us the face amount of that check?

"A The check is for $131,996.

"Q The payee?

"A Frontier Bank.

"Q And the maker?

"A B. L. Suhl.

"Q Is there any indication on either side of that check as to the disposition made of those funds at Frontier Bank, the payee?

"A No, sir.

"Q Looking at te face of that check do you recognize—

MR. UTLEY: The question preceding I did not hear.

MR. MASON: I believe the question was is there any indication on either side of the check of the disposition of those funds at the Frontier Bank, it being established that the payee, as you have just indicated, is the Frontier Bank, is that correct?

"A That is correct.

"Q Now, if you will examine the face of the check, Mr. Goodwin and tell us if any of the handwriting is yours?

"A It is.

"Q How much of the handwriting is yours?

"A The date, December the 2nd, 1963, I supplied the ABA number, 215-1223, I supplied "Bank of America, Manchester-Vermont," and "Frontier Bank" and the amount.

"Q All the writing then exclusive of the signature of the maker was prepared by you?

"A That is correct.

"Q Do you recall of your own independent recollection the circumstances of your preparing that check?

"A A check—on 12/2 of '63 there were two checks, one by Richard Gibson and one by Ronald Vaughn, that came into the bank to be paid, and the two checks were taken care of by this one draft.

"Q Did you prepare that check at anyone's direction?

"A At the direction of Margaret Wierman.

"Q Do you know who placed the signature 'B. L. Suhl' thereon?

"A Margaret Wierman.

"Q In your presence?

"A She did." [R. Tr. p. 236, line 18, to p. 238, line 11].

"Q And an account was maintained, wasn't it, at the Frontier Bank for each of these currency services?

"A That is correct.

"Q And there were transactions daily back and forth?

"A Yes.

"Q And deposits had to be made and checks had to be written from the bank to the money order company back and forth, right?

"A That is correct." [R. Tr. p. 258, lines 4-12].

R. Tr. p. 258, line 25:

"Q And the cashier of the bank—pardon me; as cashier you were in charge of the operations of the bank, were you not?

"A Yes, sir.

"Q You would handle just about everything in the bank except the loans?

"A That is correct." [R. Tr. p. 258, line 25, to p. 259, line 5].

R. Tr. p. 261, line 19:

"Q And to your knowledge this was Mrs. Wierman's first venture into the banking business, was it not?

"A In the banking business, yes.

"Q Do you know how long she had been at the bank before you came to work there?

"A Approximately a year and half.

"Q Now, when you got there did you find it still a small town operation?

"A No, she changed it quite a bit.

"Q And she was then handling the Security Accounts at the time you got there? This was already set up?

"A That is correct."

[R. Tr. p. 261, line 19, to p. 262, line 8].

CROSS-EXAMINATION

R. Tr. p. 267, line 9:

"MR. LALLY: Q I have now in my hand, your Honor "H" for identification, which I am showing the witness.

Could you examine that, please?

"A Yes, that is a check drawn on the Bank of America, Manchester-Vermont Office, as changed over by myself from a counter check of the Bank of America, dated 4-9 of '63 for $100, signed 'B. L. Suhl,' and initialled by me as having so done.

"Q Where is the initial?

May I approach the witness, your Honor?

THE COURT: You may.

THE WITNESS: On the lower right hand corner.

MR. LALLY: Q That is this little mark down here (indicating). That is your 'R' and your 'G'?

"A That is correct.

"Q Did you always sign 'R.G.' or sometimes 'R'?

"Q. Well, sometimes 'R'.

"Q Now the significance of this is that the 'B.L. Suhl' is written by you and that is why the 'R.G.' is here?

"A That is correct.

"Q It wouldn't be here except for the fact that you wrote the name?

"A That is correct.

"Q Now, my question, Mr. Goodwin, was is this the first one that you ever signed, 'B. L. Suhl' to?

"A That is correct.

"Q But it is not the last one you signed 'B. L. Suhl' to?

"A No."

[R. Tr. p. 267, line 9, to p. 268, line 11].

R. Tr. p. 271, line 23:

MR. LALLY: Q I am showing you now Government's—not Government's—Defendants' Exhibit Q, as I understand it.

THE COURT: Q-W.

MR. LALLY: Q Q-W, would you examine it, please?

"A This is a check dated August 2nd, 1963.

"Q I know what it is, Mr. Goodwin, but have you had an opportunity to examine it?

"A Yes.

"Q All right. Now, is that check signed by you?

"A It is.

"Q And the little 'r' is down in the corner on that?

MR. UTLEY: Counsel, do you mean he signed his name or Mr. Suhl's name?

MR. LALLY: Just a minute, your Honor please.

"A Yes, sir.

MR. LALLY: Now may I have the check. I would offer it as Defendants' next, your Honor.

MR. UTLEY: What is the amount?

MR. LALLY: $21,527.29.

THE COURT: Your are offering it in evidence, Mr. Lally?

MR. LALLY: Yes, your Honor.

THE COURT: Now, gentlemen, if you want to state your positions.

MR. UTLEY: We will join, your Honor.

MR. MacDOWELL: We will join, your Honor.

THE COURT: All right, let it be received and marked Defendants' Exhibit Q in evidence.

(Document referred to marked Defendants' Exhibit Q and received in evidence.)

BY MR. LALLY:

"Q This check is signed 'B. L. Suhl,' that name having been written by you, was it not?

"A The check dated August the 2nd?

"Q August 2, of 1963?

"A Yes.

"Q And you have examined it, and the rest of the writing on that check is entirely in your handwriting, is it not?

"A That is correct.

MR. LALLY: May I mark another for identification, please, your Honor.

THE COURT: Defendants' Exhibit R-W for identification.

(Document referred to marked Defendants' Exhibit R-W for identification.).

MR. LALLY: Can I approach the witness, your Honor?

THE COURT: You may.

MR. LALLY: Q I ask you to examine R-W, if you would, please?

Have you had an opportunity to examine, it, sir?

"A Yes.

"Q Now, may I have it, please?

It is true, is it not, that this also is signed 'B. L. Suhl' by you?

"A That is correct.

MR. LALLY: I will offer it next in evidence, your Honor.

MR. MASON: May I see it first, your Honor?

MR. UTLEY: What is the amount?

MR. LALLY: $13,596.29.

MR. UTLEY: What is the date?

MR. LALLY: August 12, 1963.

MR. UTLEY: August 12th, Counsel?

MR. LALLY: Yes." [R. T. p. 271, line 23, to p. 274, line 9].

R. Tr. p. 281, line 14:

"Q Now, calling your attention to Exhibit I—pardon me, your Honor, may I approach the witness?

THE COURT: You may.

MR. LALLY: Q Will you tell me if that is Mr. Suhl's signature.

"A No.

"Q All right. Now, how are you so positive that this is not when you don't know about the others?

"A I saw Margaret Wierman sign that check.

"Q That is your testimony now? I want to be sure we understand each other, Mr. Goodwin. The date on this, would you repeat it for me, please:

May I approach the witness, your Honor?

THE COURT: You may.

"A It is December the 2nd, 1963.

"Q And as I understood your testimony on direct examination this was filled out by you?

"A That is correct.

"Q You wrote in the date?

"A That is correct.

"Q And you wrote in the date of the day that it was done?

"A That is correct.

"Q December the 2nd, is that correct?

"A That is correct.

"Q All right. And this, then, was filled out in your handwriting, 'Bank of America', the numbers, 'Manchester-Vermont, Frontier Bank', and the numbers, but the signature as it is on here was written in your presence by Mrs. Wierman?

"A That is correct.

"Q No question about it?

"A Not in my mind, no.

"Q Proof positive, so to speak? I just want to give you every chance, Mr. Goodwin. Are you certain?

"A Yes, sir.

"Q All right. Mrs. Wierman was an officer of the Security Currency, was she not, that her son owned?

"A Not at that time, no, sir.

"Q In December she wasn't?

"A As far as I know she was not.

"Q She was also a large stockholder in it, was she not?

"A She was

"Q And would it surprise you to learn, sir, that the sale at which she participated was in the lawyer's office in Los Angeles on December the 2nd?

"A Yes, indeed, she couldn't be in two places.

"Q That is right.

"A She was in the Frontier Bank.

"Q That is right, she couldn't be in two places at the same time.

"A She was in the Frontier Bank.

"Q And it is your testimony right now that she was at the Frontier Bank that day, no question?

"A Yes, sir.

"Q And she signed this signature as it is on this exhibit on that day right in front of you?

"A December the 2nd." [R. Tr. p. 281, line 14, to p. 283, line 18].

[Document referred to marked Defendants' Exhibit I and received in evidence.]

MR. LALLY: Q As I understood your testimony this morning—let me get my notes here to be sure—the first of Mr. Vaughn's checks that you took to Mrs.

Wierman you said was around September 30th. I believe when you were here before you told us September 30th. Have you had a chance to refresh your memory in that regard?

"A The date should be September 20th.

"Q Not the 30th, right?

"A No, but it was around there, ten days.

"Q Well, you specifically fixed the date before, did you not?

"A It was at the end of the month in September. The 20th was the date of the check.

"Q The 20th was the date of the check?

"A Yes.

"Q The deposit check that was made, is that right?

"A I have seen the deposit slip, so therefore I know now it was September 20th.

"Q So September the 30th is out now, it was September the 20th?

"A Yes.

"Q And as I understand your testimony this morning, on that occasion the Vaughn check came in with the cash letter?

"A That is normal procedure.

"Q Someone pulled it from the cash letter and notified you, is that it?

"A No; I think the first one that came in of this nature ended up being sorted to the bookkeeper and she brought it to me on the rejected check register.

"Q And as I understood your testimony today you then took that to Mrs. Wierman?

"A Surely.

"Q And as I understood you today only you and Mrs. Wierman were present at the time of the conversation you had had with her?

"A That is correct. She was in her office alone. The door was open.

"Q And she told you that she would contact Suhl and she called him on the telephone?

"A That is correct.

"Q And you testified this morning that she then reached in her drawer and produced a check, signed it herself and gave it to you?

"A That is correct.

"Q Now I will call your attention, please, to the transcript of the direct testimony, the testimony produced by the Government, beginning page 147, your Honor, Line 21 through Line 10 on page 148, and may I approach the witness, your Honor?

THE COURT: You may.

MR. LALLY: Q Would you please read to yourself, beginning at line 17, if you will, down to line 10, here, just to yourself.

Have you had an opportunity, sir?

"A That is correct.

"Q Now, sir, you do recall being here as a witness last week, do you not?

"A I do.

"Q And being sworn to tell the truth in your testimony in this Court?

"A That is correct.

"Q And it is correct, is it not, that the following questions and answers were asked of you at that time?

"A That is correct.

"Q Beginning at line 17, page 147:

"Let's get back to the Vaughn account. You say several large checks came in shortly after the Suhl account was closed?

"A That is correct."

Q Question again by Mr. Mason:

"Was Mrs. Wierman present when the first of these checks came through?

"A She was.

"Mr. Mason: What happened?

"A I advised her that a large check had come in on the account of Vaughn made payable to Suhl and that Vaughn didn't have money to cover the check.

"Mr. Mason: What happened then?

"A Pardon?

"Mr. Mason: What happened then?

"A She then obtained funds from Suhl in Los Angeles by way of wire transfer."

Were those questions asked and did you give those answers under oath last week in that chair?

"A. I did." [R. Tr. p. 284, line 1, to p. 287, line 11].

R. Tr. p. 287, line 20:

"Q Now I would call your attention, please, to Exhibit 40-A and ask you, if you would, sir, to read the portion there that I have bracketed which I will then thereafter read.

May I approach the witness?

THE COURT: You may.

MR. LALLY: Q Beginning here, sir, to this point on that page (indicating). Read it to yourself.

Have you read it to yourself, sir?

"A I have.

"Q Did you, sir, no June 3, 1964, give a statement to Special Agent Gerald R. Femling of the Federal Bureau of Investigation?

"A I did.

"Q And where did this take place?

"A At the Frontier Bank in Covelo, California.

"Q You were still there at the bank, in the employ of the bank at the time, were you not?

"A That is correct.

"Q Mr. Femling was accompanied by someone else?

"A Yes. I don't remember his name off hand.

"Q Ronald O. Stamp. Does that refresh your memory?

"A Yes.

"Q Another Special Agent of the Federal Bureau of Investigation?

"A I believe so.

"Q And they talked to you for some time as to events, did they not, as they concerned Mrs. Wierman and Mr. Suhl before the statement was taken?

"A That is correct.

"Q And reviewed with you bank records to aid in refreshing your memory?

"A I obtained bank records for them, yes.

"Q Some considerable time was spent on this occasion with them, was there not?

"A Yes.

"Q And then the statement was reduced to writing, which was signed by you?

"A Yes.

"Q And that portion I asked you to read is a portion of the statement signed that day by you, is it not?

"A I assume so.

MR. LALLY: Perhaps we had better show him the original, your Honor. All I have is a copy. The original was a marked Exhibit.

THE COURT: No, I think it was taken back.

MR. LALLY: Yes, it would be, your Honor.

MR. MASON: We will get it for you.

MR. LALLY: I hope we can agree that what you furnished me was an exact copy, Mr. Mason.

MR. MASON: I beg your pardon?

MR. LALLY: I trust we can agree that you furnished me with an exact copy.

MR. MASON: I am willing to agree to that.

MR. LALLY: May I approach the witness, your Honor?

THE COURT: You may.

MR. LALLY: I will show you now the statement I referred to, a copy of which I just showed you.

"A Yes, I signed this statement.

"Q In fact, sir, you initialled the end of each paragraph, did you not?

"A Yes.

"Q Initialled the bottom of each page?

"A Yes.

"Q So you very carefully went over every word of it with them, did you not?

"A That is right.

MR. LALLY: Can we stipulate to use the copy? It is typewritten, your Honor. It is a little easier to read.

THE COURT: Very well.

MR. LALLY: Q And you were, on that occasion, advised by the Agents, were you not, that you were to tell them the truth?

"A As best as I could recall it.

"Q Now you did—pardon me—you did, did you not, state as a part of that statement the following:

"Shortly thereafter Mr. O'Kane of the State of California Banking Authority advised me to close this account. I did as instructed, and as soon as it was closed, large checks began coming through

which were written on the account of Ronald V. Vaughn. This was in September 1963. Ronald Vaughn was Mrs. Wierman's son-in-law and was employed by Bud Suhl in Los Angeles. I believe he is currently employed by Suhl in the United Bench, 5840 Southwestern Avenue, Los Angeles.

"The first few of these large checks which came in drawn on Vaughn's account were N.S.F. checks, inasmuch as his balance was not sufficient to cover them. Margaret Wierman wasn't there, so I held them in the rejected check register for several days. I didn't want to bounce them because I knew Vaughn was her son-in-law and I didn't want a repeat of the chewing out I had received from Suhl.

"I recall holding a written check to be charged on 9-20-63 to Vaughn's account in the amount of $46,711.00 in the rejected check register on 9-18 and 9-19-63 until receiving funds to cover this amount on 9-20-63. This check actually came in on 9-18-63 but wasn't posted to the account until 9-20-63.

"When Margaret Wierman returned she had a book of blank checks which had already been presigned by Bud Suhl. These checks were universal checks and could be written on any bank.

"From there on whenever a large check would come in to be charged against Ronald Vaughn's account I would be informed of this by the girl who was handling the incoming cash letter. I knew Vaughn did not have a large enough balance in his account to cover this check, because he never carried balances this large. So I would take this check to Margaret Wierman."

Now, did you make that statement concerning those checks to the F.B.I. Agents at that time?

"A I did." [R. Tr. p. 287, line 20, to p. 292. line 4].

R. Tr. p. 295, line 11:

"Q And you are telling me now that your testimony given on behalf of the Government last week that this was a wire transfer, that's wrong too?

"A I was mistaken.

"Q So that is two times you were mistaken in this, but you got it all straightened out today, is that it? Is this correct?

"A The check that was deposited to the account of R. V. Vaughn was signed by Margaret Wierman with Suhl's name and drawn on the Bank of America, Manchester and Vermont, in the amount of $46,000.

"Q And she was at the bank on that day?

"A She had returned, yes.

"Q But it is your testimony now that she returned but on the 18th and 19th she was away, is that correct?

"A Yes. [R. Tr. p. 295, lines 11-25].

"Q In connection with that Exhibit I—may I approach the witness, your Honor?

THE COURT: You may.

BY MR. LALLY: Q Would you refresh your recollection with reference to it, sir? Do you recall it?

"A Yes.

"Q That is, is it not, a check for $131,996?

"A Yes, sir.

"Q And as I recall your testimony this was to cover two checks, one to Vaughn and one to Gibson?

"A That is correct.

"Q And these two amounts totalled up?

"A Yes.

"Q All right. So you were aware at that time that there were checks in the Gibson account, in much the manner of Vaughn's account?

"A Not exactly. I don't quite recall the nature of the Gibson check.

"Q You were aware, as I understand it, Mr. Goodwin, that when this check was written out it was to cover a Gibson and a Vaugh check?

"A From Margaret Wierman's instructions.

MR. UTLEY: What was the answer?

THE COURT: "From Margaret Wierman's instructions."

MR. LALLY: Q This is the one you told me she signed in front of you?

"A She did.

"Q On that particular date, so we have no question about that?

"A I would not—you are asking me to remember that absolute date. I would like to accommodate you—

"Q Well, the date is on the check. You told me, did you not, that it was written on there the day that you did it? Are you going to tell me it was a different date now?

"A To the best of my recollection it was upon December the 2nd.

"Q All right. Would you put some different date on it than the day it was done?

"A The circumstances surrounding that deposit are extremely difficult to recall.

"Q All except that you recall her signing it?

"A Yes.

"Q This you recall, but from what you tell me now the fact that some of this money went to Gibson's account, you didn't know Gibson was overdrawn?

"A I knew he didn't have enough money to clear the check that went to his account, both the Vaughn check and the Gibson check were handled in this manner to cover them.

"Q And you knew there had been other Gibson checks?

"A He had an account with us. Yes, he wrote checks on his account.

"Q Then you knew there had been others that had been covered, so to speak, with a Suhl check in much the same way, did you not?

"A That is correct.

"Q So at that time you knew that?

"A I knew what.

"Q That there were checks from Gibson just like there were checks from Vaughn. There were more from Vaughn—

"A Yes, many more.

"Q —but you knew that the Gibson checks were coming in and were being covered in the same way?

"A On specific instruction, not carte blanche as they were from Mr. Vaughn.

"Q I want to be sure we understand, Mr. Goodwin—

"A The checks from Mr. Gibson were payable to brokerage funds, all payable to Mr. Suhl.

"Q But as to the checks that Mr. Gibson wrote, that were like the Vaughn checks, payable to Suhl, these were covered in a manner similar to the coverage of the Vaughn checks, were they not?

"A Yes.

"Q And you were aware of this?

"A Well, on specific instructions, once again.

"Q When they came in the rejected check register they were brought to you, were they not?

"A They were called to my attention, yes.

"Q All right. So you knew each time it happened?

"A Yes.

"Q And you got a check somewhere and made a deposit to cover it?

"A By one of the four ways as I explained earlier.

"Q The same for Gibson as for Vaughn?

"A Only on specific instructions from Mr. Gibson's account.

"Q But you were aware of each Gibson transaction, were you not?

"A That is correct.

"Q I would ask you to read, if you will, 41-A to yourself.

THE COURT: I don't recall that there were any letters on these?

MR. MASON: I believe, your Honor, the originals, the handwritten originals, were put in as 41 and the typed copies were given "A" numbers, as I recall.

MR. LALLY: The one I had said "A" on it.

(Discussion between Clerk and the Court, inaudible to reporter.)

THE COURT: The clerk has explained it to me. They were designated for our records as 40, 41 and 42, but for some reason Mr. Mason desired to have his copy made "A", and that is the one that went through the machine, and that is why there appears to be "A", "B" and "C" on there—or "A" on each one of them.

MR. MASON: Your Honor, lest there be some mystery made of this I will explain. Here, for example, is 40, and just for ease of counsel and everybody reading it we gave them typewritten copies.

THE COURT: I know, Mr. Mason, but that is a longhand written statement and that is one that was marked 40, 41 and 42. Then there were typewritten copies, and you, according to what the Clerk tells me, wanted them marked 40-A, 41-A and 42-A, and then when it went through the machine to provide these gentleman with copies your letter got on them.

MR. MASON: That is right.

THE COURT: But the original documents do not have any letters on them.

MR. MASON: That is right.

THE COURT: All right. Mr. Lally is correct in designating it in that fashion, but the thing I was confused about was that I didn't know about this mechanical operation that has now been explained to me.

BY MR. LALLY: Q Do you recall on June 8, 1964 again talking to Federal Bureau of Investigation Agent Gerald R. Femling?

"A I do.

"Q And also to Agent Stamp at that time?

"A Yes.

MR. MASON: So the record will be clear I would point out that June 8th was the date of the preparation and June 3rd is the actual date of the interview.

MR. LALLY: That is correct, your Honor. It is on the bottom.

"Q June 3rd is the date of interview?

"A I guess so, It is on there.

"Q Now, on that occasion did you tell them as follows—this was again at the bank, was it not?

"A Yes.

"Q On the same day that you talked to them about the other statement that we talked about?

"A The second, yes. I think they were both taken on the same day.

"Q "I was not really aware that a check involving the commercial account of Gibson had been in process until asked by the F.B.I. for copies of his ledger sheets.

"Richard Gibson was Bud Suhl's pilot and I met him when he flew Suhl to Covelo on two occasions.

"In reviewing the deposit slips for deposits to Gibson's account I note that I personally prepared three of these deposits. The first of these, one on 10-17-63 in the amount of ten thousand I don't specifically recall and didn't pay any particular attention to. The other two prepared by me, which were on 12-2-63 in the amount of $45,296, and on 1-6-64 in the amount of fifteen thousand I believe came in to the Frontier Bank for deposit in the form of a wire."

Now, did you make that statement to the Agents?

"A I did." [R. Tr. p. 296, line 1, to p. 302, line 6].

R. Tr. p. 307, line 23:

"MR. LALLY: Q As I understood yesterday from your statement to the F.B.I. you were first aware that there was compensating checks as far as Gibson was concerned when you talked to the F.B.I. and went through the records of the bank, this is the first time you realized that?

"A Yes, sir.

"Q Calling your attention, please, to Exhibits Nos. 10 and 11—may I approach the witness, your Honor?

"THE COURT: You may.

BY MR. LALLY: Q Will you examine these, sir?

"A I believe—

"Q Would you examine them, please?

Have you done so, sir?

"A I have.

"Q It is true, is it not, Mr. Goodwin, that the first of these, Exhibit No. 10, is check No. 4127, drawn on the Bank of America, Manchester-Vermont, dated January 6, 1964, payable to Gibson in the amount of $15,000, with Suhl's signature on it?

"A That is correct.

"Q The number is 4127, right?

"A That is correct.

"Q And the date 1-6-64, right?

"A Right.

"Q Now, calling your attention to Exhibit 11, it is 4128, the next in sequence, is it not?

"A Yes.

"Q And it is, is it not, dated 1 January, '64?

"A The same as the other one, yes.

"Q The same date as on the previous exhibit?

"A That is correct.

"Q And it is made payable to Vaughn in the amount of $70,000, bearing Suhl's signature, does it not?

"A Yes.

"Q So both of these are, are they not, filled out completely with the exception of the signature in your handwriting?

"A That is correct.

"Q On the date that they bear?

"A That is correct." [R. Tr. p. 307, line 23, to p. 309, line 13].

R. Tr. p. 314, line 2:

"MR. LALLY: Q On this check there was a little "r" written down at the bottom where you had indicated you signed it, is that right?

"A That is correct. Let's see if it appears on both of them? I don't think it is on this one.

"Q You didn't put it on that one?

"A I don't see it.

"Q But the significance of the little "r", as I understood it from you, was that you put this on to show that you signed it?

"A That is correct.

"Q And then there is that—may I approach the witness again?

THE COURT: You may.

MR. LALLY: Q Exhibit H, that is that $100 check back in April, that has got one of those little 'r's" on it too, hasn't it?

"A That is correct.

"Q And that was put on there to indicate that you had signed it?

"A I had nothing to hide.

"Q All right, that is why you put the little "r" on there. That is its only significance, is it not?

"A I did it and I had instructions from Mr. Suhl to do it, yes.

"Q I say that is the only significance of the little "r".

"A What else could it be?

"Q It didn't go on there because you O.K.'d the check in its course through the bank or anything like that?

"A No.

"Q Or O.K.'d anything else put on there?

"A No.

"Q It would be only because of that is the way of identifying to you that you signed it with authorization?

"A From Mr. Suhl, and I put it on there.

"Q That you had the authorization?

"A That is correct.

MR. LALLY: May this be marked next for identification, your Honor?

THE COURT: Defendants' Exhibit—

MR. LALLY: I would like to identify it with the witness, your Honor.

THE COURT: All right. Defendants' Exhibit S-w for identification.

(Document referred to marked Defendants' Exhibit S-w for identification.)

MR. LALLY: May I approach the witness please, your Honor?

THE COURT: You may.

MR. LALLY: Q I would like you, sir, to look at the lower corner of this exhibit and tell me what initial is in the lower corner below the signature?

"A That is my initial.

"Q And the check is filled out, is it not, in your handwriting?

"A It is.

"Q Including the signature, is it not?

"A Yes.

"Q Is that not correct, sir?

"A It is.

"Q In other words, that little "r" signifies on that check that you put the signature on there, does it not? The same as on all the other checks you told me?

"A That is correct.

"Q All right. This check is dated 9-20-63 and it is in the amount of $46,711, is it not?

"A It is.

"Q And that, sir, is the check that you said under oath yesterday that Mrs. Wierman signed the name "Suhl" in your presence, is it not?

"A Did I see the check yesterday?

"Q You didn't see the check, sir, but that is what you said yesterday?

"A That was my belief." [R. Tr. p. 314, line 2, to p. 317, line 3].

R. Tr. p. 346, line 14:

"A I have.

MR. LALLY: May I approach the witness, your Honor?

THE COURT. You may.

MR. LALLY: Thank you. Beginning at page 238, line 13, do you recall your testimony last week here?

"A I do.

"Q And did I ask these questions and did you give these answers:

"I am talking about the 22nd, on the 22nd. Please answer the question.

"A I believe I received this check on the 21st and it was only dated the 22nd.

"Q Oh, it wasn't done, then, on this occasion on the date it bears as you previously stated, then?

"A It could have been the 21st.

"Q Oh, how many others did you have different dates on than the dates on which—

"A None.

"Q Just this once, you changed it?

"A I didn't change it.

"Q You wrote a different date on it, though, then the date on which you did it?

"A I didn't write a different date on it.

"Q But your testimony now is then is different because it wasn't on the 22nd that she would have conceivably given you this, wasn't it?

"A Perhaps not.

"Q You know it wasn't. You talked to her on the telephone that day, didn't you.

"A Yes.

Then we go to another check.

"A You didn't ask me to read that; I am sorry.

"Q I am sorry if there is some mistake.

MR. MacDOWELL: May I confer with Mr. Lally?

THE COURT: Yes. I was confused too, Mr. Lally.

MR. LALLY: I think I turned one page, your Honor. I had two of them earmarked.

THE COURT: I understood you to say 237.

MR. LALLY: Mr. MacDowell has just corrected me. I skipped one page. Perhaps he can re-read it to make sure. May I approach the witness, your Honor?

THE COURT: Yes, you may.

MR. LALLY: I am sorry sir.

THE COURT: What is this you are referring to now?

Go ahead.

MR. LALLY: Beginning on page 237, your Honor.

"A Line 13.

MR. LALLY: Line 13.

THE COURT: Yes.

MR. LALLY: (Reading)

"Q All right. Next I call your attention to Exhibit D-W, which is 11-22-63. How did this check happen to be in your handwriting?

"A Marge Wierman gave me this check.

"Q Right there at the bank?

"A That is correct.

"Q Excuse me just a moment. And this was in the same manner as the other one, was it not?

"A That is correct.

"Q In other words, you walked over to her desk and told her, 'I have got one of Vaughn's checks again,'

in essence, and she reached in the drawer and gave you another one?

"A That is correct.

"Q And then you took that and filled it out after you received it from her?

"A That is correct.

"Q And then gave it to one of the girls to deposit?

"A Yes, sir.

"Q On November 22, 1963?

"A That is correct.

"Q Then tell me, please, how did you talk to her on the long distance telephone in San Francisco, because that is the day President Kennedy was assassinated, then?"

Did you give those answers in response to those questions last week in that chair"

"A I did.

"Q Now the fact is she wasn't there, is it not?

"A That is correct." [R. Tr. p. 346, line 14, to p. 349, line 16].

R. Tr. p. 392, line 5:

"Q. Now, calling your attention to—I don't think we covered this one, your Honor, Exhibit J. May I approach the witness?

THE COURT: Well, I don't recall it—

MR. LALLY: I am sure we didn't.

THE COURT: —but that doesn't prove anything.

MR. LALLY: Thank you, your Honor.

"Q Have you had an opportunity to examine that, sir?

"A Yes.

MR. LALLY: May I approach the witness, your Honor?

THE COURT: You may.

MR. LALLY: Again, Mr. Goodwin, this is dated December 4, 1963, payable to R. Gibson, $20,000, all of it in your handwriting except the signature?

"A That is correct.

"Q And is the signature, sir, in your handwriting too?

"A It is not.

"Q All right. This one doesn't have one of those little "r's", does it?

"A I didn't notice.

"Q I didn't see any. Perhaps you can review it.

"A The "r" always indicated that I signed it. In this case it may have been punched out. There is a hole punched on this one. It could have been on there and it could have been punched out.

"Q Is that the authentic signature of Mr. Suhl, or do you know?

"A I believe that to be a check signed by Margaret Wierman for Mr. Suhl.

"Q Signed by Mrs. Wierman?

"A Yes, she would have signed that.

"Q And to do that she would have to be in the bank on December 4th, wouldn't she, Mr. Goodwin?

"A Not necessarily.

"Q Oh, she gave you universal checks presigned by herself now, is that it?

"A Mrs. Wierman after leaving on, I forget, either the 3rd or 4th of December for some business she had in Southern California, did sign some of these checks. I don't recall exactly how many. Some of them.

"Q She signed these and left them with you? And then she mailed you some more, and these were universal checks signed and left with you, is that right?

"A I believe on the 2nd of December, Monday, she signed several of these and left them.

"Q All right. Now be sure you have got everything right. I want to be sure, be fair now. December 2nd she signed this and gave it to you?

"A Be fair to yourself, did she?

"Q I am asking you, sir.

"A She did.

"Q And she would have to be in Covelo at the Frontier Bank to do it on December 2nd, wouldn't she?

"A It would be convenient.

"Q Are you telling me now that she signed this in Los Angeles on December 2nd?

"A It was signed on December 2nd at the Frontier Bank.

"Q And it was signed by her?

"A Yes.

"Q And then you used it on December the 4th?

"A Yes, sir.

"Q We have got that straightened out now. She had to be in the bank on December 2nd to do it?

"A Not necessarily, but she did it on December 2nd.

"Q All right, sir. The rest of it is entirely in your handwriting?

"A That is correct.

"Q But as I understand your testimony you did not sign that check?

"A I did not.

"Q You saw her do it?

"A I did." [R. Tr. p. 392, line 5, to p. 395, line 1].

R. Tr. p. 415, line 13:

"MR. LALLY: Q This check is marked as paid at the Mark Hopkins. Would this fix the date in your

mind as to the time that this meeting took place? Mr. Suhl paid his bill, as I understand it, with that check.

"A I can't answer. I know the meeting was in October. I couldn't pin it as the 19th of October.

MR. LALLY: Next, your Honor, would be "U" for identification.

MR. UTLEY: What is that check exhibit number?

MR. LALLY: "T".

THE COURT: U-W, Defendants' Exhibit U-W for identification.

(Check referred to marked Defendants' Exhibit U-W for identification.)

MR. LALLY: May I approach the witness, your Honor?

THE COURT: You may.

MR. LALLY: Q This is a check to Mr. Dalton for $1968, which I understand is for the shares. Would that help to refresh your memory as to the sequence of events at that time?

"A I didn't see this check.

"Q I knew you had never seen it, but I thought it might help refresh your memory because the shares were purchased.

"A I have no knowledge of this. This is something entirely out of my realm of personal knowledge.

MR. MacDOWELL: What was the date of that check, U-W?

MR. LALLY: "U"?

MR. MacDOWELL: Yes.

MR. LALLY: It is 10-21-63.

Now may I approach the witness, your Honor?

THE COURT: You may.

MR. LALLY: Q I would like, please, Mr. Goodwin, to have you compare Exhibits for identification

"T" and "U", if you would—pardon me, just one moment, please—with the exhibits already in evidence marked A, B, C, D and E. Take a look at those, please.

Have you had a chance to look at them?

"A Yes.

MR. LALLY: May I approach, your Honor?

THE COURT: You may.

MR. LALLY: It is true, is it now, that the check number on Exhibit T-w is 4075?

"A Yes.

"Q And the check numbers on Defendants' A through E are 4079 to 4083—

"A That is correct.

"Q —in sequence?

"A No, there are checks missing between 075 and 077.

"Q But 79 to 83 are in sequence?

"A That is correct.

"Q And the check which is made payable to Mr. Dalton, which is "U", is 4085, is that correct?

"A Yes.

"Q It would appear, then, that these all came from the same check book?

"A Yes, I would think so.

"Q And that this one to the hotel was paid at an earlier time than the one to Mr. Dalton, correct?

"A Yes.

MR. UTLEY: What is Exhibit "T" number?

MR. LALLY: Pardon?

MR. UTLEY: What is the Exhibit T's number?

MR. LALLY: "T" is 4075, and the one to Mr. Dalton is 4085, right?

"A That is correct.

"Q Now these two bear, "T" bears the date of 10-19, correct?

"A That is right.

"Q And "U" bears the date of 10-21?

"A Right.

"Q Then the checks that we are talking about, so far as the exhibits in evidence are concerned, are all filled out in your handwriting, bear dates of 11-5, 11-14, 11-18, 11-22 and 11-27, I think we have agreed that was?

"A Right.

"Q All of these in between checks bear dates later than the two on each end, do they not?

"A That is correct.

"Q Is it still your testimony, sir, that you did not get those from Mr. Suhl at the Mark Hopkins Hotel?

"A Yes.

"Q How did they come into your possession, sir?

"A I believe that, as I testified earlier, that these are a group of checks sent to me by Margaret Wierman from Los Angeles." [R. Tr. p. 415, line 13, to p. 418, line 20].

R. Tr. p. 422, line 4:

I want to show you Exhibit I. Is this the check you told me Mrs. Wierman had written the signature or Suhl to?

"A Yes.

"Q That is the one that, according to your testimony the date it bears she wrote the signature on it?

"A That is correct.

"Q And did I understand it also to be your testimony that she wrote "B.L.Suhl" on Exhibit J?

"A That is correct.

"Q. And that went on December 4th, but that is the one your said she may have written on December the 2nd?

"A That is correct.

"Q Everything else on these two exhibits is in your handwriting?

"A That is correct." [R. Tr. p. 422, lines 4-18].

APPENDIX NO. 4.

PETITIONERS' BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

The Knowing Use of False Testimony Cannot Be Tolerated in Obtaining a Conviction in a Criminal Case.

The "due process" provisions in the Fifth and Fourteenth Amendments to the Constitution are the same. The Fourteenth Amendment applies to state court proceedings, and the Fifth Amendment applies to proceedings in the federal court.

This Honorable Court has held in a number of cases that a conviction cannot be upheld in a state court action by the knowing use of false evidence.

Miller v. Pate, 386 U.S. 1, 87 S.Ct. 785;

Napue v. People of the State of Illinois, 360 U.S. 264, 79 S.Ct. 1173;

Alcorta v. State of Texas, 355 U.S. 28, 78 S.Ct. 103;

Pyle v. State of Kansas, et al., 317 U.S. 213, 63 S.Ct. 177;

Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340.

Since the "due process" provisions in each of the Amendments referred to are the same, except that one is applicable to the state court cases and one to federal cases, it would seem to follow that the same rule as annuonced in state court cases would apply to federal court cases under the Fifth Amendment.

As to whether or not the prosecution in this case knew of the falsity of Goodwin's testimony, we only need to point to the fact that the Federal Bureau of

Investigation obtained and had in their possession statements of Robert Goodwin at the time this trial started which were in direct conflict with the statement he made while testifying for the Government in the first mistrial, and then at the second trial on direct testimony, he made still a different statement about Mrs. Wierman's participation in connection with the writing and signing of these Suhl checks, and finally on cross-examination he admitted that he, himself, signed the check for $46,711.00 of November 20, 1963.

It is clear that Goodwin testified to three or four different ways that the Suhl check of November 20, 1963 in the sum of $46,711.00 was signed, all involving Margaret Wierman, and then finally admitted under vigorous cross-examination that it was he, and not Suhl or Wierman who signed the check of September 20, 1963.

He testified that in several other instances he saw Mrs. Wierman sign Suhl's name to the checks in question. This is not only denied by Mrs. Wierman, but Mr. Morrill, the handwriting expert who examined these signatures and compared them with Wierman's and Suhl's handwriting, has testified to the effect that none of them were written by Mrs. Wierman. This is fortified by the testimony of Ernest E. Johnson, a Los Angeles attorney who testified to the fact that Mrs. Wierman was in his office at Los Angeles, California on November 27, 1963 and again in the afternoon of December 2, 1963. Mrs. Wierman also offered such documentary evidence as signed gasoline charge tickets,

cancelled checks and other similar evidence showing her whereabouts at a time Goodwin had her in the bank at Covelo signing these Suhl checks, or participating in some way in the check writing activities.

Another bit of telling evidence, showing Mrs. Wierman's innocence in connection with any so-called check-kiting activity, is the fact that when Vaughn told her on November 22, 1963 that Suhl had asked him to write a check, she called her son on the telephone and asked him if it was true, and if so, why—and gave him to understand that she would have no part of it and that unless it was stopped she would not return to the bank. She also called Goodwin at Covelo that same day and asked him why he would approve such a check without taking it up with her. The answers she received from both Suhl and Goodwin hereinabove mentioned obviously lulled her into a sense of security.

If she, Suhl and Vaughn were in a conspiracy and she knew what was going on and a party to it, there would be no reason or occasion for Vaughn to tell her something she already was a party to and knew, and there would be no reason for her to call Goodwin if she had prior thereto signed Suhl's name to checks and given them to Goodwin for deposit.

If an accomplice, such as Goodwin who has enough intelligence to be a cashier and vice president of a bank, can testify, under oath, that when he took this $46,711.00 check to Mrs. Wierman she called her son on the telephone and that he wired the money to the

bank; at a later time on the stand he testified that when he took this check to Mrs. Wierman she got a blank check, signed B. L. Suhl's name thereon and handed it to him, at another time testifies that when he took the check to her, she reached in the drawer of her desk and pulled out a blank check signed by Suhl, and then while under vigorous cross-examination admits that he, himself, signed this check, has not committed wilful perjury, then it is hard to understand what it would take to constitute wilful perjury. There certainly was a motive and a reason for it. He knew that if a crime had been committed, he was an active participant and knew that as an officer of the bank he was deeply involved. He knew that he and Mrs. Wierman were the only officers of the bank, and it was one or the other and he was desperately trying to "put the monkey on Mrs. Wierman's back".

It seems to us that the prosecution would have to more than close their eyes not to know and realize that the testimony of this witness was false and untrue.

The United States Court of Appeals in its decision here (Appendix No. 1) seems to take an unbelievable view upon the weight to be given the testimony of this accomplice, whose testimony under the law must be "received with caution and weighed with great care."

The Appellate Court approved the language in the case of *Lyda v. United States,* 9 Cir., 1963, 321 F. 2d 788, 794-95, which is to the effect that the testimony of such a witness cannot be received if it is "incredible and unsubstantial on its face" and then said: "It is difficult to conclude that Goodwin's testimony is "incredible or unsubstantial on its face." If the conclusion of the appellate court is correct, then

just what would it take to establish "incredible or unsubstantial" testimony?

With all due respect to the Honorable Court of Appeals, it appears that it may have lost sight of the fact that the evidence of witness Goodwin is that of an accomplice and that his testimony "must be received with caution and weighed with great care."

Obviously, the only defense that Mrs. Wierman can make of many things testified to by Goodwin would be a denial. It is one person's word against another, but where the accomplice had been contradicted by very substantial evidence on almost every accusation made against the defendant where evidence other than an oral denial is possible, then it seems to us and we urge that an undue amount of weight is being given to the testimony of an accomplice who has admitted that he testified falsely.

In support of our contention, see;

Greenwell v. U. S., 336 F. 2d 962 at 969;
U. S. Persico, 305 F. 2d 534 at 536;
Glasser v. U. S., 315 U.S. 60, 67; 62 S.Ct. 457.

As said by this Honorable Court in *Napue v. People of the State of Illinois*, 260 U.S. 264 at 269, 79 S.Ct. 1173 at 1177, says:

> "First, it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. (citing cases) The same result obtains when the State, although not soliciting false evidence, *allows it to go uncorrected when it appears.*" [Emphasis ours]

And quoting with approval from *People v. Savvides,* 1 N.Y. 2d 554, 557, which said:

> "A lie is a lie, no matter what its subject, and, if it is any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth."

Could it be said that the district attorney did not know that Goodwin had lied when he had testified to several ways in which he got the $46,711.00 check, all involving Mrs. Wierman, and then finally admitting that he, himself, signed this check.

The question of whether or not Mrs. Wierman signed this check or gave it to him went to the very question of her involvement in this matter and most certainly was relevant to the issues in the case.

This testimony not only involved Mrs. Wierman in the alleged crime, but Suhl as well, and was highly prejudicial.

The above argument is applicable to Grounds 1 to 5 inclusive.

Since There Is No Substantial Evidence Against Mrs. Wierman, and Since She Is the Only Officer of the Bank Involved in the Indictment, Count 5 Must Fall.

The Court in *U. S. v. Froman,* 265 F. 2d 702 at 705, said:

> "It is true, of course, that to convict the defendant of aiding and abetting the bank officer it is necessary to prove all the elements of a federal offense by the bank officer."

Insufficiency of Evidence to Warrant Conviction on Counts 3, 4, 5 and 6, as Against All, and Fatal Variance Between Allegations and Proof in That None of the Gibson Checks Were Deposited in Suhl's Account as Alleged, but Were All Made Payable to Stock Brokers for Stock, or to Some Other Person or Corporation and Cashed or Deposited by Such Persons in Their Own Bank Account, All of Said Checks Having Been Paid in Full Upon Presentation to the Covelo Bank.

The Gibson checks, themselves, are in evidence, and show upon their face to whom they were payable and who endorsed them.

The Government claims that the $50,000.00 check of Gibson's was deposited to the account of Suhl in the Bank of America, Manchester-Vermont Branch. It calls attention to the fact that Suhl's account shows a $50,000.00 deposit on August 28, 1963. It claims that there is written on the back of the check the words: "for deposit only" and that the number of Suhl's account is also written on the back of this check.

Petitioners contend that this check which is in evidence as Government's Exhibit 49-C shows on its face that it was cashed at the bank, as testified to by Suhl [See R. Tr. p. 794, line 25, to p. 795, line 4].

An examination of this check will show that an officer of the bank placed his name on the front or face of this check, which is obviously an O.K. by an officer for cashing, and the teller's stamp under date of August 28, 1963 indicates that teller No. 5 cashed this check. It is a well known fact that an officer, rarely, if ever, approves a check of a regular customer for de-

posit and that a teller only uses their stamp on a check when cashing. Suhl did not endorse this check, the only endorsement being the Bank of America. The writing on the back of the check "for deposit only" and "Acct. No. 04535" obviously was written by two different people, *and written over the stamp endorsement of the bank.* Had this check been deposited to Suhl's account, and if done in the regular course of business it would have required Suhl's endorsement underneath the bank's stamped endorsement.

The language of "Acct. No. 04535" could have been placed there by someone in the bank to indicate the source from which the bank got the check, but there certainly was nothing on the check to indicate that Suhl deposited it in his account. It may have been that these funds or a part thereof later were deposited in Suhl's account because he testified that he used the money for the purchase of stock and he was writing many checks for the purchase of stock. These facts are at variance with the allegations in the indictment.

Since all the Gibson checks were payable to persons other than the defendants, or any of them, the case of *Kann v. U. S.*, 323 U.S. 88, 65 S.Ct. 148 is in point.

Furthermore, it was the intention of the defendant Suhl and Gibson that the Gibson checks would be paid upon presentation, and they were paid in full. It is not essential to an honest transaction that the money be on deposit at the time the check is written under the law of California. See *People v. Becker,* 137 Cal. App. 349; *People v. Griffith,* 120 Cal. App. 2d 873, and *Williams v. U. S.*, 278 F. 2d 535 at 537, where the California cases were cited with approval.

This argument covers Point No. 8 as well as No. 7.

Improper Cross-Examination of Defendants.

The Government was permitted to cross-examine the defendant Suhl, over objection, with reference to the truthfulness of certain findings of fact (Government's Ex. 55 for Identification) made by a Referee in Bankruptcy which were not final and were then pending on appeal, and which findings, etc. were reversed by the United States Court of Appeals for the Ninth Circuit on the 28th day of June, 1965, and only a few days after the jury's verdict herein. That none of the alleged unlawful use of funds was proven as a fact, but all questions propounded were foreign to the issues involved in this criminal trial, and were highly prejudicial to the rights of the defendants.

Osborne v. U. S., 351 F. 2d 111 at 117;
Sang Soon Sur v. U. S., 167 F. 2d 431 at 433;
22 C.J.S., 1091, Section 683;
Fabacher v. U.S., 20 F. 2d 736 at 737;
Paris v. U. S., 260 F. 529;
Pyle v. U.S., 156 F. 2d 852, 855;
Boyd v. U. S., 142 U.S. 450, 12 S.Ct. 292;

The Trial Court Erred in Permitting the Government to Attempt to Prove That the H. Keith Yates Transaction Was a Crime, Over Objection, and in the Government's Attempt to Show That It Was a Part of the General Alleged Conspiracy.

In the first place the Yates transaction was not a crime.

People v. Becker, 137 Cal. App. 349;
People v. Griffith, 120 C. A. 2d 873;
Williams v. U.S., 278 F. 2d 535 at 537;

and it was prejudicial error to inject it into the trial of this case.

We respectfully urge that this petition for a writ of certiorari presents important questions of law, some of which have not been passed upon by this Honorable Court.

Respectfully submitted,

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Attorney for Petitioners.

HARRY A. PINES and
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306-805—68

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1347

B. L. SUHL AND MARGARET WIERMAN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1–21) is reported at 390 F. 2d 547.

JURISDICTION

The judgment of the court of appeals was entered on February 6, 1968, and a petition for a rehearing was denied on March 18, 1968. On April 22, 1968, Mr. Justice Douglas extended petitioners' time for filing a petition for a writ of certiorari until April 27, 1968.[1] The petition was filed on April 20, 1968. The

[1] The application for the extension was filed on April 20, 1968, three days after the time for petitioning for certiorari had expired under Rule 22(2) of the Rules of this Court. Notwithstanding the requirement of Rule 34(2) that the applica-

jurisdiction of this Court is invoked under 28 U.S.C 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence against petitioner Wierman was sufficient to justify submission of her case to the jury.

2. Whether proof of a transaction alleged to have been an overt act in the conspiracy, and similar in character to the transactions involved in the principal charges, was material.

3. Whether it was proper cross-examination on the issues of motive and intent for the government to ask petitioners about the truthfulness of findings of fact made by the referee in bankruptcy in a related civil proceeding.

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tion be filed within the period sought to be extended, we raise no question as to the timeliness of the petition. We do not regard the 30-day period for petitioning for certiorari in a criminal case as a jurisdictional limit, compare our Memorandum in Opposition in *Morales et al. v. I.N.S.*, Nos. 1555, 1556 Misc., and we recognize the existence of special circumstances in this case which warrant exception to the Court's Rules. It appears that the Clerk received the petition on April 15, within the normal 30-day period allowed by Rule 22(2), but did not file it at that time because the certified record, which under the Rule must accompany the petition, had not been received. Counsel for petitioners had asked the clerk of the court of appeals three weeks earlier to transmit the record, but through an oversight in the clerk's office it had not been prepared. When the Clerk of this Court informed counsel, on April 18, that the record had not been received, the oversight was discovered and the record was promptly certified and transmitted. It arrived on April 20 (the same day on which the application for an extension was filed) and the petition was thereupon docketed.

STATEMENT

Following a jury trial in the United States District Court for the Northern District of California, petitioners were convicted on all counts of a six-count indictment charging them with using the mails to defraud (counts 1–4), conspiring so to do (count 6), and misapplying funds of a federally insured bank (count 5), in violation of 18 U.S.C. 1341, 371, and 656, respectively (1 R. 2–11, 54–55). On November 1, 1965, petitioner Suhl was sentenced to five years' imprisonment on each of counts 1–5, to run concurrently, and to five years on count 6, to run consecutively to the sentence on the other counts. Petitioner Wierman, on the same date, was sentenced to concurrent five-year terms on all six counts.[2] The court of appeals affirmed (Pet. App. 1–21).

The substantive mail fraud counts (1–4) charged two substantially identical "check kite" schemes, whereby "false credit would be obtained by exchange and passing of worthless checks between two banks" (1 R. 2, 6). The banks involved in both schemes, to which petitioners were common parties, were a Los Angeles branch of the Bank of America and the Frontier Bank of Covelo, California. Covelo is a small country town in a remote section of northern Califor-

[2] Pursuant to 18 U.S.C. 4208(a)(2), the court directed that Suhl become eligible for parole at such time as the Board of Parole deemed appropriate (1 R. 78). In accordance with 18 U.S.C. 4208 (b) and (c), the Wierman sentence was by its terms made subject to possible later modification on the basis of a study which the court ordered made of factors which might be deemed relevant to the imposition of a more appropriate penalty (1 R. 79).

nia, several hundred miles from Los Angeles—a fact which, as noted by the court of appeals, contributed substantially to the success of the schemes (Pet. App. 3–4). Petitioner Wierman (the mother of petitioner Suhl) was the president of the Covelo bank during the relevant period and, with Suhl, owned all but a small fraction of its stock (2 R. 203). The two schemes also involved, in addition to petitioners, a codefendant named Ronald Vaughn (counts 1 and 2), who was found guilty on both counts and did not appeal,[3] and a codefendant named Richard Gibson (counts 3 and 4), who testified for the government following dismissal of the indictment as to him (4 R. 556–593).

The scheme charged in counts 1 and 2 was that petitioner Suhl drew checks on his account in the Los Angeles bank for deposit by Vaughn in Vaughn's account with the Covelo bank, at times when Suhl's account contained insufficient funds to cover them; and, correspondingly, checks were drawn by Vaughn on his Covelo account and deposited by Suhl in his Los Angeles account at times when Vaughn's account lacked adequate covering funds, all of which was known to the participants. The scheme contemplated the utilization by these two defendants of "the span of time involved in the normal passage of mails" between the two distant localities in order to "accomplish delay in the posting of checks to the * * * respective accounts" (1 R. 3). The resulting delay gave Suhl, who was, by his own testimony, financially em-

[3] Vaughn was also convicted on counts 5 and 6, charging conspiracy and aiding the misuse of funds of a federally insured bank (1 R. 53).

barrassed at the time, the use of artificially generated cash (Pet. App. 5).

The specific charge of count 1 was that on November 13, 1963, at a time when Vaughn's Covelo account contained less than $600, Suhl deposited a $55,000 check of Vaughn's in Suhl's Los Angeles account, thereby causing the Los Angeles bank to send the check by mail to Covelo for collection. Vaughn and petitioner Wierman were charged as aiders and abettors of this transaction (1 R. 4). Count 2 charged that Mrs. Wierman, on November 18, 1963, at a time when Suhl's Los Angeles account contained less than $200, deposited a $55,000 check of Suhl's in Vaughn's Covelo account, causing the check to be mailed to Los Angeles. Vaughn and Suhl were charged as aiders and abettors (1 R. 4–5).

Counts 3 and 4 were similar to counts 1 and 2, except that they involved Gibson rather than Vaughn as the third party to the transactions and two different kited checks, each in the amount of $50,000 (1 R. 5–8).

Count 5 charged that Mrs. Wierman, over a three-month period commencing in September 1963, as president of the Covelo bank, misapplied banks funds by causing a series of Suhl's checks drawn on his Los Angeles account, ranging in amount from $46,000 to $125,000 and aggregating $585,000, to be credited to Vaughn's Covelo account, knowing that Suhl's account lacked sufficient covering funds, and authorizing corresponding withdrawals from Vaughn's account with knowledge of the account's insufficiency. Vaughn

and Suhl were charged as aiders and abettors (1 R. 8–10).

Count 6 charged that all four defendants conspired to commit mail fraud offenses of the sort charged in the four substantive mail fraud counts (1 R. 10–11).

The evidence, which was voluminous and is stated in more detail in the opinion of the court of appeals (at Pet. App. 3–11), showed, in brief, that in late 1963 Suhl, who claimed a net worth of $800,000, was in danger of sustaining heavy financial losses because of the decline in price of a large block of stock he owned. To obtain funds to support its price by making additional purchases of the stock, he undertook to borrow from every possible source and was negotiating to sell the Frontier Bank and two money order companies which he and his mother completely or substantially owned. When his account at the Los Angeles branch of the Bank of America became overdrawn, the first of the two kiting schemes described in the indictment took form. Vaughn, in Los Angeles, and at Suhl's request, wrote several checks on Vaughn's account at the Frontier Bank, payable to Suhl, even though that account contained insufficient funds to cover the checks. Suhl immediately deposited the checks in his account at the Bank of America and used the money in his stock market activities. When each of Vaughn's checks arrived at the Frontier Bank, it was brought to the attention of the cashier, Robert Goodwin, a government witness and acknowledged accomplice in the kiting activities. A check drawn on Suhl's account at the Bank of America, payable to Vaughn, was in each case then prepared at Covelo and deposited in

Vaughn's account, and Vaughn's check to Suhl honored. In at least three instances, the Vaughn check to Suhl was held in the "rejected check register" for one to three days before payment. Suhl's checks to Vaughn were then sent to the Bank of America, where, with the exception of the last check, they were paid upon receipt (Pet. App. 4–5). The Suhl-Gibson transactions, while differing in details (described in the court of appeals' opinion), were basically the same as the Suhl-Vaughn exchanges in purpose and mode of execution (Pet. App. 5–6). Goodwin testified that in all of his activities by which he assisted and made possible the kiting he was acting at the express instructions of Mrs. Wierman as well as of Suhl (Pet. App. 7–8).

ARGUMENT

1. Petitioner Wierman contends that her conviction cannot stand because government witness Goodwin, who, she says, was the only witness who in any way implicated her in the fraudulent schemes, was shown on the record to have perjured himself (Pet. 20–30; Pet. App. 87–92). As the careful review of the evidence by the court below shows (Pet. App. 7–11), the claim is unsound. While defense counsel's searching cross-examination disclosed several inconsistencies and internal contradictions in the testimony regarding the *details* of Mrs. Wierman's involvement, the central substance of Goodwin's testimony—that Mrs. Wierman was aware of and indeed took an active part in the kiting activities—was never retracted or shown be be patently false (Pet. App. 10). Therefore, as the court pointed out, the jury was entitled to believe him,

or to believe enough of his testimony to convict, notwithstanding his evident confusion and uncertainty as to certain of the details of her participation (Pet. App. 10). The significance of the witness's motives, inconsistencies, and contradictions is, of course, uniquely a jury question. Here the jury was instructed that the testimony of an accomplice is "to be received with caution and weighed with great care" (7 R. 1281) and was further instructed concerning the use of prior inconsistent statements for impeachment purposes (7 R. 1278, 1282). A standard instruction regarding the credibility of witnesses was also given (7 R. 1276–1278). The jury's resolution of credibility after these instructions was properly respected by the courts below.[4]

Goodwin, moreover, was not the only witness who implicated Mrs. Wierman. Significant corroborative testimony was given by government witness Tom Luther, a bookkeeper at the Covelo bank (2 R. 135), who testified that he had once seen, in a drawer of a desk to which only Mrs. Wierman had access, a pad of Bank of America checks, otherwise blank, bearing Suhl's signature (2 R. 139–141).[5] According to Good-

[4] Petitioners' allegation that the government knowingly used false evidence (Pet. 11, Q. 1; Pet. App. 87–92) is apparently premised on the existence of inconsistencies in Goodwin's testimony. We question whether his faulty recollection on matters of detail can by any appraisal be regarded as showing his testimony to be "false", but whatever inaccuracies existed were corrected upon cross-examination.

[5] The testimony of Luther's (2 R. 136, 138–139) that was stricken (4 R. 545–546), to which petitioners refer at Pet. 28, did not relate to this incident.

Petitioners' assertion (Pet. 28) that the checks which Luther saw in Mrs. Wierman's desk bore Vaughn's signature as well as

win, one of the ways in which the Suhl-Vaughn kiting activities were carried out was through the use of blank checks, pre-signed by Suhl, which Mrs. Wierman gave to Goodwin to fill out with appropriate dates and amounts, for deposit to Vaughn's account to cover Vaughn's checks to Suhl (2 R. 209–212).

2. Petitioners also challenge (Pet. 19–20; Pet. App. 96) the government's introduction of evidence of a transaction between Suhl and an acquaintance named Harold Yates, not directly connected with either the Suhl-Vaughn or Suhl-Gibson dealings. The government was permitted to show the following:

Yates owned a large block of stock, on margin, in the same company in which Suhl also had a large speculative interest. With the objective of forcing short sellers to buy in and thus bolster the price of the stock, Suhl suggested to Yates that he clear his margin account and demand delivery of his shares. Because Yates had insufficient funds to do this, Suhl suggested that he execute a money order for the necessary amount, drawn on one of the Suhl companies, and pay for it with the proceeds of a loan from the Frontier Bank which Suhl suggested Yates apply for, using the stock as collateral. Yates executed the money order, filled out an application for a loan at the Frontier Bank, signed a signature card for a checking account at the bank, and "paid" Suhl with a check drawn on the anticipated but as yet non-existent

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Suhl's is not supported by the record. At the record reference cited (2 R. 145, line 10), Luther testified that he had once seen Goodwin fill in the amount on a check bearing Suhl's and Vaughn's signatures, but the witness did not relate that check to those that he had seen in the desk.

account. Suhl promptly deposited Yates' check in his own account at the Bank of America. Because Yates lived outside the "loan area" of the Frontier Bank, his loan application was never approved. When Yates' check was presented for payment, it was held in the rejected check register at the Frontier Bank until Suhl wired covering funds to the bank, when it was paid. Suhl later secured a loan for Yates at another bank, with the proceeds of which Yates reimbursed Suhl for the funds which Suhl had wired to Covelo to honor Yates' no-account check (4 R. 595–606, 609–610, 612–616; Pet. App. 6–7).

The court of appeals correctly held that this evidence was admissible (Pet. App. 11). As the court noted, the transaction was but another illustration of how Suhl used the delay incident to the transfer of checks by mail to create an artificial cash fund for his operations. This transaction was, properly, one of the overt acts charged in the conspiracy count (1 R. 10–11). Even if we assumed *arguendo* that the transaction was not strictly in furtherance of the conspiracy, it was relevant to the intent and purpose of the defendants in engaging in the conspiracy—*i.e.*, to enable Suhl to obtain temporary use of funds for his attempt to prevent the price of his stock from falling. See, *e.g.*, *United States* v. *Marchisio*, 344 F. 2d 653, 667 (C.A. 2).

3. Petitioners also claim that government counsel was improperly permitted to cross-examine them concerning the truthfulness of certain findings of fact made by the referee in a then pending bankruptcy proceeding involving one of their money order com-

panies (Pet. App. 95).[4] The substance of this contention was considered extensively by the court of appeals and rejected (Pet. App. 13-20). Petitioners relate none of the background facts and make no real effort to show that the court's relevant holding was erroneous. Extended discussion of the point therefore appears unnecessary. It is sufficient for present purposes to stress, as the opinion below points out, that the affairs of the money order companies, both of which had trust accounts in the Frontier Bank, were germane to the issues at trial, particularly to Suhl's defense of lack of criminal intent and Mrs. Wierman's defense of lack of knowledge of any of the improprieties that were going on over a period of months in the bank of which she was president.[5] The referee's findings were not introduced in evidence, but were merely marked for identification in connection with cross-examination; there is no support in the record for the claim that the jury was improperly exposed to the official nature of the document. Furthermore,

[4] The bankruptcy proceeding is the subject of *Suhl* v. *Bumb*, 348 F. 2d 869 (C.A. 9), certiorari denied, 382 U.S. 938. A decision by the referee that petitioners were substantially indebted to the debtor company and that the trustee in bankruptcy was entitled to a turnover order against them in the amount of the debt had been affirmed by the district court prior to the trial below. In the cited decision, rendered after the trial, the court of appeals reversed, without prejudice to further efforts by the trustee to proceed against petitioners. The reversal rested on procedural grounds—petitioners' suggestions to the contrary (Pet. 12, Q. 10; Pet. App. 95) notwithstanding—unrelated to the merits of the controversy.

[5] Petitioners' assertion that "all questions propounded [by the prosecutor] were foreign to the issues involved in this criminal trial" (Pet. App. 95) is unfounded.

the only objections at trial to the use of the exhibit were based upon the claimed incompetence of the testimony sought to be elicited, not on the ground that the jury was being improperly made aware of the document's character.[8]

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1968.

[8] Petitioners also claim that there was a fatal variance between the indictment and the proof regarding the Suhl-Gibson transactions, in that, assertedly, the $50,000 Gibson check was cashed by Suhl at, rather than deposited in his account with, the Bank of America (Pet. App. 93–94). Since, however, the alleged variance affects only counts 3 and 4 and the sentences imposed on both counts against both petitioners run concurrently with the sentences on the other substantive counts (1, 2, and 5), there is no occasion to consider the contention. *United States* v. *Romano*, 382 U.S. 136, 138; *Lawn* v. *United States*, 355 U.S. 339, 359; *Hirabayashi* v. *United States*, 320 U.S. 81, 85. For the reasons stated by the court of appeals (Pet. App. 12), moreover, the contention is in any event without merit.

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IN THE

Supreme Court of the United States

October Term 1967
No. 1347

B. L. SUHL and MARGARET WIERMAN,
Petitioners,

vs.

UNITED STATES OF AMERICA.

REPLY BRIEF.

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REPLY BRIEF.

Preliminary Statement.

In our reply brief we shall endeavor to limit our brief to clarification of the issues which the Government seems to have confused. Otherwise, we shall rely upon the presentation of the issues made in petitioner's brief attached to the petition for the Writ of Certiorari as Appendix No. 4. (Pet. App. 87-95.)

Questions Presented by This Review.

I.

An examination of petitioner's concise statement of questions presented for review (Pet. 11-12) will disclose that the important questions raised by petitioners extend much farther than do those which are mentioned in Government's brief. (Gov't Brief, p. 2.)

The first five questions raised (Pet. 11) are most important to petitioners and are directed to the question

of the use of false evidence by the government upon which to obtain a conviction, and whether or not the testimony of accomplice Goodwin is incredible and unsubstantial.

II.

Improper cross-examination of Defendant Suhl, over objection, with reference to the truthfulness of Referee's findings of fact [Gov't Ex. 55 for identification] which were not final and were then pending on appeal, and which findings etc. were reversed by the United States Court of Appeals for the Ninth Circuit on the 28th day of June, 1965, and only a few days after the jury's verdict herein, were highly prejudicial to the rights of defendants. Not only were these findings set aside by the order of the court and became ineffective for any purpose, but the truthfulness of the facts found in the findings have never been legally proven, and all matters mentioned in the findings are foreign and immaterial to the issues involved in the trial herein. The effect of this examination and the questions asked were in the nature of accusatory misconduct by petitioners on a subject matter not involved in the criminal indictment, were immaterial, and which were never attempted to be established as a fact.

ARGUMENT.

The Government chooses to refer to the false testimony of Goodwin as "inconsistencies and internal contradictions." The petitioners contend that Goodwin's testimony is nothing more or less than plain lies and deliberate perjury in an effort to throw all the blame on Mrs. Wierman, who was a bank officer, and to relieve himself, while he was the bank officer in charge of the operations of the bank.

As will be observed from a reading of the quoted testimony of Goodwin (Pet. App. No. 3, p. 49 of Petition for Writ of Certiorari) and particularly at page 68 thereof, Goodwin in making his statement to the Federal Bureau of Investigation on June 3, 1964, says that when the first check drawn on Vaughn's account came in (Check of Sept. 20, 1963, for $46,711.00) Margaret Wierman wasn't *there, so he held "them" in the rejected cash register for several days, from "9-18 and 9-19-63 until receiving funds to cover this on 9-20-63". That "when Margaret Wierman returned she had a book of blank checks which had already been presigned by Bud Suhl." —"From there on whenever a large check would come in to be charged against Ronald Vaughn's account I would be informed of this by the girl who was handling the incoming cash letter."

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*In reference to Margaret Wierman being away from the bank on September 18 and 19, 1963, note her quoted testimony (Pet. App. No. 2, p. 22) at page 30 thereof, where she denies being away from Covelo on Sept. 8 and 19, 1963, and says that she was at the bank, working; that she attended the bank's board of directors meeting on the night of Sept. 18, 1963 and offers documentary proof of the fact she was there in Covelo at the time. [R. Tr. p. 1122, line 16, to p. 1135, line 1.] Also, if Margaret Wierman had on Sept. 20, 1963 a book of blank checks signed by Suhl, there would be no occasion or necessity for her to sign Suhl's name to a check on this date, as we shall soon see was later testified to by Goodwin.

Testimony of Goodwin at the Trial.

On direct examination of Goodwin with reference to where he obtained the Suhl checks for deposit in the Vaughn account, he says:

"Q. Do I understand, Mr. Goodwin, the same day that a Vaughn check came in a Suhl check was prepared in the same amount? A. That is correct.

Q. Who prepared the Suhl check? A. I did.

Q. On every occasion? A. I would think so, yes.

Q. Where did you obtain a Suhl check or such preparation? A. There were three places to obtain them, one was from Mrs. Wierman. *In the beginning she supplied the check and the signature to the check.*

Q. When you say 'supplied the signature to the check,' what do you mean by that? A. She signed the signature of B. L. Suhl to the check.

Q. She, herself, signed— A. That is correct.

Q. —the signature. On one or more than one occasion? A. On one or more than one occasion.

Q. Was there ever any occasion when she handed you a Suhl check which already had a signature on it? A. That is correct.

Q. Was that one of the three possibilities? A. That is the first.

Q. All right, the second possibility? A. The second possibility was that the check which was already drawn against the account of B. L. Suhl signed by him, a personalized check, would be

handed to me to fill in the date and the amount and the payee.

Q. Be handed to you by whom? A. By Margaret Wierman. Or I would have some of these checks, there were occasions that I had some of these checks in my desk and I used those to credit the account of Mr. Vaughn.

Q. You say there was occasions when you had some of those checks in your desk. By those checks, what do you mean? A. The pre-signed checks by B. L. Suhl.

Q. A pre-signed check, a check already signed by Suhl, but the other writing not filled in? A. That is correct.

Q. During the period of time you had such checks in your desk drawer where did you get them? A. From Margaret Wierman. She mailed them to me from Los Angeles.

No. There was another, I would take a universal check, which is a check that does not have the bank filled in, I would fill in the name of the bank, the date and the amount and supply the signature of B. L. Suhl myself.

Q. On one or more occasions you yourself signed Suhl's signature? A. I did." (Emphasis ours.)

The first of these checks was deposited in Vaughn's account on Sept. 20, 1963, and the emphasized portion of the above question shows that the witness definitely says that Mrs. Wierman furnished both the check and the signature to this check which was for $46,711.00, and she did this notwithstanding the fact that the witness told the F.B.I. in his statement that when Mrs.

Wierman returned on Sept. 20, 1963 she brought
her a book of checks which had been presigned by

There was a mistrial in this case which immed
preceded the trial where Goodwin was examined in
by the Government [see cross-examination of Goo
R. Tr. p. 284, line 1, to p. 287, line 11] where Goo
admitted that in the mistrial he had testified that
the first of these checks came through, Mrs. Wie
was at the bank, that he advised her that a
check had come in on the account of Vaughn made
able to Suhl and that Vaughn didn't have the mon
cover the check and that Mrs. Wierman then obt
funds from Suhl in Los Angeles by way of wire t
fer. (See above quoted testimony, Pet. App. N
p. 49, at pp. 64-65.)

So it appears that the witness has stated that
check of Vaughn's dated Sept. 20, 1963 was pai
a deposit in Vaughn's account with a Suhl check w
the signature of Suhl was signed by Wierman, w
Wierman furnished a presigned check signed by
and by way of wire transfer.

See also testimony [R. Tr. p. 295, lines 11-25, w
is copied in Pet. App. No. 3, p. 49 at p. 69.]

At [R. Tr. p. 314, line 2, to line 14, p. 317] (S
App. No. 3 at p. 77) where Goodwin finally a
under cross-examination that he, himself, signed S
name to the check for $46,711.00 dated Septembe
1963.

Goodwin's Testimony Regarding Check of December 12, 1963 False.

Goodwin testified [R. Tr. p. 236, line 18] (Pet. App. No. 3, p. 49, at p. 55) that the Suhl check dated Dec. 2, 1963 for $131,996.00 was prepared by him at Margaret Wierman's direction and that Mrs. Wierman signed Suhl's name thereon in his presence [R. Tr. p. 236, line 18, to p. 238, line 11.] (See also p. 56, Pet. App. No. 3.)

This check of Dec. 2, 1963 is marked Deft. Exhibit I. Goodwin on cross-examination [R. Tr. p. 281, line 14] (See also p. 61, Pet. App. No. 3) says he saw Margaret Wierman sign Suhl's name to this check; that there is no question about it, he is certain.

He says it would be a surprise for him to learn that the sale at which she participated was in the lawyer's office in Los Angeles on Dec. 2nd, because "she could not be in two places." And he repeats "She was in the Frontier Bank." It is his testimony that she was at the Frontier Bank that day, no question about it, and she signed this signature as it is on the exhibit on Dec. 2nd, right in front of him. [R. Tr. p. 281, line 14, to p. 283, line 18.] (See also Pet. App. No. 3, p. 62.)

Notwithstanding this positive testimony by Goodwin, Attorney Ernest E. Johnson of Los Angeles appeared as a witness, with his records, and testified that Mrs. Wierman was in his office in Los Angeles on Dec. 2, 1963 and produced documentary evidence of the meeting. Mrs. Wierman denied writing Suhl's name on the check in question or knowing anything about it. She testified to being in Los Angeles on Dec. 2, 1963 and offered documentary evidence in the form of gasoline charges, etc. showing her presence there. Also, Sher-

wood Morrill appeared as a handwriting expert and testified that Mrs. Wierman did not sign the check in question, Deft. Exhibit I, or any of the other checks shown to him. [R. Tr. p. 868, line 23.] (See also Pet. App. No. 2, p. 40.)

What stronger proof could be offered in support of petitioners' contention that Goodwin's testimony involving Mrs. Wierman in this transaction was false than that appearing in the record? It certainly established without question that Goodwin's testimony was both incredible and unsubstantial and was downright false.

Exhibit "J", the Check of December 4, 1963.

The evidence of the check of December 4, 1963, marked Exhibit "J" is very similar to that of Dec. 2, 1963. The handwriting expert testified that the name "Suhl" on this check was not written by Mrs. Wierman.

Check of November 22, 1963.

Mrs. Wierman testified [R. Tr. p. 1094, line 22] that on Nov. 22, 1963 she was at the residence of Mr. and Mrs. William Richards in Monterey Park, Los Angeles County. She produced two documents, a Standard Oil or Chevron gasoline charge slip for gas purchased in Los Angeles on that day, and a telephone charge made while there. She recalled this being the day that President Kennedy was assassinated. She had a conversation with Ronald Vaughn on that day and she phoned Goodwin at Covelo from Los Angeles. Goodwin admits the phone call.

Goodwin had previously testified that the check of Nov. 22, 1963 was one of the checks which Mrs. Wierman signed at the bank [R. Tr. p. 346, line 14] and he

later admits that she was not at the bank on that day. [R. Tr. p. 346, line 14, to p. 349, line 16.] (See Pet. App. No. 2, p. 80.)

This is another of the checks which Mr. Morrill, the handwriting expert, says Mrs. Wierman did not sign.

The above relates only a part of the false and perjured evidence given by this witness. Others are covered in (Pet. App. No. 4.)

The government knew of the false testimony in ample time to have corrected it, but with full knowledge of it, resisted a motion for a judgment of acquittal.

Erroneous and Prejudicial Cross-Examination of Petitioners.

The particular part of the cross-examination to which we wish to here emphasize is where the Government was permitted to cross-examine the petitioner Suhl with reference to the truthfulness of certain findings of fact made by a Referee pertaining to matters foreign to the charges in the indictment, and at a time when there was an appeal pending over jurisdiction of the Referee to make such findings. The Referee's findings and other appealed from were subsequently reversed in *Suhl v. Bumb,* 348 F. 2d 869.

This was clear error and prejudicial to the rights of the petitioners, as were other cross-examinations complained of in our opening brief.

This cross-examination was improper for several reasons:

First: It was conducted in an effort to impeach the witness Suhl. A witness cannot be impeached upon an immaterial matter.

Second: It had no relation to the subject matter of the trial; and,

Third: The findings used in this cross-examination were then pending on appeal and were not final. The Court of Appeals, Ninth Circuit, later set the judgment appealed from aside because the Referee was without jurisdiction to try the issue involved or to make said findings.

Other points raised in this petition are adequately covered in petitioner's opening brief.

Respectfully submitted,

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